Official Publication of the State Bar of New Mexico

Bar Bulletin

October 5, 2016 • Volume 55, No. 40

Aspen Brilliance by Valerie Fladager (see page 3)

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State Bar Center

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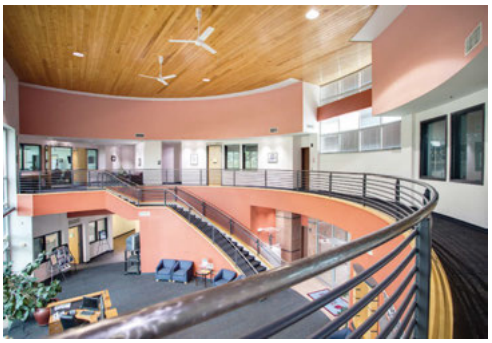

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STATE BAR of NEW MEXICO

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7
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Cover Artist: Valerie Fladager photographs a plethora of images that catch her interest and each image selected represents a series of multitude. The best are chosen for their striking design, light and color which she then interprets with digital imaging, pastels or watercolor. Her work has been sold through several galleries and arts and crafts venues. She has taught art and science and is a member of the National League of American Pen Women. Additional work can be viewed at http://valeriefladager.com/. She can also be contacted by email, kvfladager@aol.com.

Notices

Court News

Board of Bar Examiners

Reciprocal Admission Grows

The Supreme Court of the State of New Mexico has added four new states to the list of jurisdictions with which our bar shares reciprocal admission: New Jersey, New York, North Carolina and West Virginia. The number of states to which experienced New Mexico attorneys may apply without taking the bar exam is now 36, plus the District of Columbia. For more information on reciprocal admission, including links to other states' requirements, visit www.nmexam.org/reciprocity/.

New Mexico Court of Appeals

Notice of Retirements

Court of Appeals Chief Judge Michael E. Vigil announces two retirements: Hon. Michael D. Bustamante on Oct. 31 and the Hon. Roderick T. Kennedy on Nov. 30. A Judicial Nominating Commission will be convened in Santa Fe on Dec. 1 to interview applicants for the vacancy of Judge Bustamante. A second Judicial Nominating Commission will be convened later in December to interview applicants for the Judge Kennedy vacancy. Further information on the application process can be found at http://lawschool.unm.edu/judsel/index.php. Look for updates regarding these vacancies in the fall.

First Judicial District Court

New Tierra Amarilla Phone Numbers

Effective Oct. 3, the Rio Arriba County Court in Tierra Amarilla will have new phone numbers as shown below:

Judge Jennifer L. Attrep, Division V:
phone: 505-455-8325,
fax: 505-455-8323

Rio Arriba County Court Clerk's Office
phone: 505-455-8335,
fax: 505-455-8280

Sixth Judicial District Court

Judicial Applicants

Two applications were received in the Judicial Selection Office as of 5 p.m., Sept. 14, for the pending judicial vacancy in the Sixth Judicial District Court due to the retirement of Hon. Daniel Viramontes (effective Aug. 26). The District Judicial Nominating Commission met on Sept. 22 at the Luna County District Court in Deming to evaluate the applicants for this position. The Commission meeting was open to the public and those who wanted to make a public comment were heard. The names of the applicants in alphabetical order are:

Edward Lee Hand
Jarod K. Hofacket

Professionalism Tip

With respect to parties, lawyers, jurors, and witnesses:

I will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications.

Bernalillo County Metropolitan Court

Mediation's 30th Anniversary Celebration

Members of the legal community and the public are cordially invited to a reception celebrating Metro Court's Mediation Division's 30th year of operation. The event will take place from 5:30-7:30 p.m. on Oct. 13 in Metro Court's Rotunda. Join the Court as it takes a look back: honoring those who spearheaded the program, recognizing those who have given countless hours to the program's mission and reflecting on the invaluable service mediation provides to the community. R.S.V.P. to Camille Baca at metcrb@nmcourts.gov or 505-841-9897.

U.S. District Court, District of New Mexico

Reappointment of Incumbent United States Magistrate Judge

The current term of office of U.S. Magistrate Judge Gregory B. Wormuth is due to expire on May 17, 2017. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight-year term. The duties of a magistrate judge in this Court include the following: (1) conducting most preliminary proceedings in criminal cases, (2) trial and disposition of misdemeanor cases, (3) conducting various pretrial matters and evidentiary proceedings on delegation from a district judge, and (4) trial and disposition of civil cases upon consent of the litigants. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the Court and should be addressed as follows: U.S. District Court, CONFIDENTIAL—ATTN: Magistrate Judge Merit Selection Panel, 333 Lomas Blvd. NW, Suite 270, Albuquerque, NM 87102. Comments must be received by Oct. 28.

State Bar News

Attorney Support Groups

- Oct. 10, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (group meets on the second Monday of the month). Teleconference participation is now available. Dial 1-866-640-4044 and enter code 7976003#.
- Oct. 17, 7:30 a.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (group meets the third Monday of the month.)
- Nov. 7, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (group meets the first Monday of the month.)

For more information, contact Hilary Noskin, 505-449-7984 or Bill Stratvert, 505-242-6845.

Alternative Methods of Dispute Resolution Committee

APD/Community Relations Presentation

The City of Albuquerque ADR Office has been tasked with multiple roles in the ongoing effort to improve relations between APD and the community. The ADR Committee and ADR Coordinator and Assistant City Attorney Tyson Hummell invite members of the legal community to attend the presentation from noon-1 p.m., Oct. 27, at the Second Judicial District Court 3rd Floor Conference Room. The presentation will explore two fundamental aspects of this effort: the previous year-long Albuquerque Collaborative on Police Community Relations and the ongoing Officer/Civilian Mediation Program. There will be ample time for questions and discussion. Attendees should expect an interactive session. R.S.V.P. with Breanna Henley at bhenley@nmbar.org. Lunch is provided. The ADR Committee will meet following the presentation from 1-1:30 p.m.

Board of Bar Commissioners

2016 Election

Pursuant to Supreme Court Rule 24-101, the Board of Bar Commissioners is the elected governing board of the State Bar of New Mexico. The 2016 election of eight commissioners for the State Bar of New Mexico will close at noon, Dec. 1. Nominations to the office of bar commissioners shall be made by the written petition of any 10 or more members of the State Bar who are in good standing and whose principal place of practice is in the respective district. Terms in the following districts will expire Dec. 31: First (Bernalillo County), Third (Los Alamos, Rio Arriba, Sandoval and Santa Fe counties), Fourth (Cofax, Guadalupe, Harding, Mora, San Miguel, Taos and Union counties), Sixth (Chaves, Eddy, Lea, Lincoln and Otero counties) and Seventh (Catron, Doña Ana, Grant, Hidalgo, Luna, Sierra, Socorro and Torrance counties). Petitions must be received by 5 p.m., Oct. 24. Refer to the Sept. 23 *Bar Bulletin* for the duties and requirements of Bar Commissioners, specific term information and nomination instructions.

Committee on Women and the Legal Profession

#LawMom Luncheon

The Committee on Women and the Legal Profession invites all State Bar members to have lunch and listen to a panel discussion about general issues that parent-attorneys face on a day to day basis. Panelists include attorneys Quiana Salazar-King, Liz Garcia, Patricia Galindo and Michelle Hernandez. The luncheon is from noon-1 p.m., Oct. 19, at the Hispano Chamber of Commerce, located at 1309 4th St SW in Albuquerque. R.S.V.P.s are appreciated but not required. Contact Zoe Lees at zel@modrall.com to indicate your attendance.

Historical Committee

Jewish History in New Mexico

Long before statehood in 1912, Jewish settlers made their homes in all corners of the high desert. Along the way, community members built institutions that influenced many New Mexico communities. The Jewish Staab family contributed to the construction of the Cathedral in Santa Fe. A Jew was the first mayor of the incorporated city of Albuquerque. Attorney Robert Nordhaus co-founded the Sandia ski lift and tramway. Join Naomi Sandweiss, author of *Jewish Albuquerque* and past president of the New Mexico Jewish Historical Society, from noon-1 p.m., Oct. 14, at the State Bar Center to learn more about the rich history of Jewish involvement in New Mexico and some of the fascinating personalities who participated. Lunch will be available at 11:30 a.m. R.S.V.P. with Breanna Henley at bhenley@nmbar.org.

Natural Resources, Energy and Environmental Law Section

Nominations Open for 2016 Lawyer of the Year Award

The Natural Resources, Energy and Environmental Law Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 16. The award will recognize an attorney who, within his or her practice and location, is the model of a New Mexico natural resources, energy or environmental lawyer. More detailed criteria and nomination instructions are available at www.nmbar.org/NREEL. Nominations should be submitted by Oct. 28 to Breanna Henley, bhenley@nmbar.org.

Practice Sections

Elections Have Begun

All practice section chairs have appointed nominating committees to solicit candidates by Oct. 15 to serve on their respective boards beginning in January 2017. Those interested in serving on a board should visit www.nmbar.org/sections and provide the respective section's nominating committee chair with a brief statement of involvement in the section and in the law profession generally. The chair of the nominating committee can provide more information on the process and specific requirements for serving on that section's board.

Proposed In-house Counsel Section

The State Bar seeks input from members interested in an in-house counsel practice section to serve the needs of attorneys who focus their practice on a single or small group of corporate clients, or who serve as in-house counsel for a corporation, government, non-profit or business entity. The section will pledge to promote professionalism, excellence, and understanding and cooperation among those attorneys engaged in this area of practice. The section would be committed

Address Changes

All New Mexico attorneys must notify both the Supreme Court and the State Bar of changes in contact information.

Supreme Court
Email: attorneyinfochange@nmcourts.gov
Fax: 505-827-4837
Mail: PO Box 848
Santa Fe, NM 87504-0848

State Bar
Email: address@nmbar.org
Fax: 505-797-6019
Mail: PO Box 92860
Albuquerque, NM 87199
Online: www.nmbar.org

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505-228-1948 • 800-860-4914
Judges 888-502-1289
www.nmbar.org/JLAP

to addressing the professional interests of in-house counsel by informing members about issues of particular interest to them, identify and share best practices through various forms of information sharing, and offering social and professional networking opportunities. Those who are interested should email Breanna Henley at bhenley@nmbar.org.

Prosecutors Section

Annual Award Open

The Prosecutors Section recognizes prosecutorial excellence through its annual awards. Awards for 2016 will be presented in the following categories: child abuse (Homer Campbell Award), DWI, drugs, white collar, domestic violence, violent crimes (excluding domestic violence and child abuse cases) and children's court prosecutor. For detailed award criteria and nomination procedures, visit www.nmbar.org/prosecutors. Nominations may be made by anyone and additional letters of support are welcome. Submit nominations to Breanna Henley at bhenley@nmbar.org by Oct. 14.

Solo and Small Firm Section

October Luncheon Presentation

New Mexico's Prisons and Jails

The Solo and Small Firm Section sponsors monthly luncheon presentations on unique law-related subjects. Albuquerque attorney Matt Coyte will discuss various penal issues on Oct. 18 with "New Mexico's Prisons and Jails—Are We Making Things Worse?" On Nov. 15 Fred Nathan, executive director of Think New Mexico, a results-oriented think tank serving New Mexicans, will discuss the work of Think New Mexico and various policy issues facing the 2017 legislative session. On Jan. 17, 2017, Ron Taylor will share his lawyerly insights as a juror in a long murder trial. All presentations will take place from noon-1 p.m. at the State Bar Center. Contact Breanna Henley at bhenley@nmbar.org to R.S.V.P.

Young Lawyers Division

Elections Have Begun

The election is now open for positions on the Young Lawyers Division Board. Positions up for election include: a two-year term for Director-at-Large, Position 4; a two-year term for Region 2 Director, consisting of the 1st, 4th, 8th, and 10th judicial districts; a two-year term for Region 4 Director, consisting of the 3rd, 6th, and 12th judicial districts and Sierra County; and a one-year term for Region 5 Director, consisting of the 2nd and 13th judicial districts and Catron, Socorro, and Torrance counties. State Bar members who are under the age of 36 or in their first five years of practice are automatically members of the Division and eligible to participate in the election. All candidates must collect at least 10 signatures from YLD members to become a candidate. Regional director petitions must be signed by at least 10 members whose principle place of practice is within the specified region. To view and download the nominating petition, visit www.nmbar.org/yld > elections. Send complete petitions, a headshot and a 100-150 word professional biography by Oct. 19 to Breanna Henley at bhenley@nmbar.org.

First Judicial District Pro Bono Clinic

The YLD is seeking volunteers for the First Judicial District pro bono clinic from 10 a.m.-1 p.m., Oct. 7, in the first floor jury room at the First Judicial District Court. Volunteers should arrive at 9:45 a.m. for brief training and breakfast. Volunteer attorneys will provide free legal advice on civil legal matters except family law and paralegal and law student volunteers are needed to conduct intake. Contact YLD Region 2 Director, Jordan Kessler, at JLKessler@hollandhart.com and provide your practice area to volunteer.

UNM

Law Library

Hours Through Dec. 18

Building & Circulation	
Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	noon–6 p.m.
Reference	
Monday–Friday	9 a.m.–6 p.m.
Saturday–Sunday	Closed
Holiday Closures	
Nov. 24–25 (Thanksgiving)	

Other Bars

Albuquerque Lawyers Club

'Wacky World of Startups' Luncheon

Pat McNamara will present "The Wonderful Wacky World of Startups—What It Is, Why You Should Care" at noon on Oct. 5 at Seasons Rotisserie and Grill in Albuquerque. As it turns out, startups aren't just millennials sitting in mom's basement programming the latest dating app. In order to stay relevant and competitive, organizations like GE, Ford and the U.S. Navy are all using tactics similar to startups. For more information, visit www.albuquerquelawyersclub.com. Join the Club for $250 per year which includes nine lunches.

New Mexico Black Lawyers Association

Immigration Law CLE

The New Mexico Black Lawyers Association invites members of the legal community to attend "Immigration and Deportation" (5.0 G, 1 EP) on Nov. 18 from 8 a.m.–4:30 p.m. at the State Bar Center in Albuquerque. Registration is $225 and lunch is included. For more information, or to register online, visit www.newmexicoblacklawyersassociation.org. The deadline to request a refund is Nov. 11.

New Mexico Criminal Defense Lawyers Association

'Lawyers, Guns and Money' CLE

Warren Zevon's classic rock song comes to life, for your educational benefit, in one information-filled CLE. Join the New Mexico Criminal Defense Lawyers Association in Roswell this fall for the "Lawyers, Guns & Money" (6.0 G, 1.0 EP) seminar on Oct. 14. Learn the ins and outs of touch DNA and guns, challenging ballistics, gun trusts and more. Civil attorneys welcome. To register for this seminar, visit www.nmcdla.org.

New Mexico Defense Lawyers

Annual Awards Luncheon

The New Mexico Defense Lawyers Association will honor two attorneys at its Annual Awards Luncheon and CLE event on Oct. 14 at the Hotel Andaluz in Albuquerque. The 2016 Defense Lawyer of the Year Award will be presented to Lee M. Rogers, Jr. of Atwood Malone Turner & Sabin, PA, and the 2016 Young Lawyer of the Year Award will be presented to Corinne L. Holt of Allen Shepherd Lewis & Syra, PA. The luncheon celebration will be followed by a CLE program featuring nationally recognized speaker and attorney Christopher W. Martin of Martin, Disiere, Jefferson & Wisdom, LLP, on the

topic "Jury Selection in the 21st Century: Millennials, Misfits and More." A panel of distinguished judges will then discuss ethics and professionalism topics relevant to jury selection and civil defense practice. The event will conclude with a reception. For more information and registration, visit www.nmdla.org or call 505-797-6021.

Other News

Christian Legal Aid

New Volunteer Training Seminar

Christian Legal Aid of New Mexico invites new members to join them as they work together to secure justice for the poor and uphold the cause of the needy. Christian Legal Aid will be hosting a New Volunteer Training Seminar from 11 a.m.–5 p.m., Oct. 28, in the State Bar Board Room. Join them for free lunch, free CLE credits, and training as they learn the basics on how to provide legal aid. For more information or to register, contact Jim Roach at 505-243-4419 or Jen Meisner at 505-610-8800 or christianlegalaid@hotmail.com.

Workers' Compensation Administration

Notice of Public Hearing

The New Mexico Workers' Compensation Administration will conduct a public hearing on the changes to the New Mexico fee schedule and billing instructions at 1:30 p.m., Oct. 19, at the WCA, 2410 Centre Avenue SE, Albuquerque. Proposed changes may be found at the WCA website at: http://www.workerscomp.state.nm.us/. Comments made in writing and at the public hearing will be taken into consideration. Oral comments may be limited to five minutes per speaker. Comments should be submitted by the close of business on Nov. 2 to the WCA Economic Research and Policy Bureau at PO Box 27198, Albuquerque, NM 87125-7198 or to Richard.Adu-Asamoah@state.nm.us. Those with disabilities should all 505-841-6083 for assistance attending or participating in the meeting.

Notice of Vacancies on Supreme Court Committees

The Supreme Court of New Mexico is seeking applications to fill vacancies on the following Supreme Court committees:

- Appellate Rules Committee
- Board Governing the Recording of Judicial Proceedings (reporter position)
- Board of Bar Examiners
- Board of Legal Specialization
- Children's Court Rules Committee (respondent's attorney and judge positions)
- Code of Professional Conduct Committee
- Courts of Limited Jurisdiction Rules Committee
- Disciplinary Board
- Domestic Relations Rules Committee
- Minimum Continuing Legal Education Board
- New Mexico Commission on Access to Justice
- Rules of Civil Procedure Committee
- Rules of Evidence Committee
- Statewide Alternative Dispute Resolution Commission

Unless otherwise noted above, all licensed New Mexico attorneys are eligible to apply. Anyone interested in volunteering to serve on one or more of these committees may apply by sending a letter of interest and resume by mail to Joey D. Moya, Chief Clerk, PO Box 848, Santa Fe, New Mexico 87504-0848, by fax to 505-827-4837, or by email to nmsupremecourtclerk@nmcourts.gov. The letter of interest should describe the applicant's qualifications and may prioritize no more than 3 committees of interest.

The deadline for applications is Friday, Oct. 21.

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Paid Subscriptions In-County	2661	2650
Sales Through Dealers, Carriers, etc.	0	0
Other Classes Mailed Through the USPS	0	0
Total Paid Distribution	6069	6120
Free Distribution by Mail		
Outside-County	0	0
In-County	0	0
Other Classes Mailed Through the USPS	0	0
Free Distribution by Mail	90	90
Total Free Distribution	90	90
Total Distribution	6159	6159
Copies not Distributed	0	0
Total	6159	6159
Electronic Circulation	**Average**	**Actual**
Requested Electronic Copies	2437	2516
Total Printed and Electronic Circulation	8596	8726
Percent Paid	98.95%	98.97%

I Certify that the statements made above are true and complete.
Evann Kleinschmidt, *Bar Bulletin* Editor

New Mexico Lawyers and Judges Assistance Program

Tip of the Month

Gratitude

In the Aug. 3 *Bar Bulletin*, the NMJLAP Tip of the Month identified gratitude as a strategy proven to improve health and increase life satisfaction. Indeed, as Positive Psychology Coach Derrick Carpenter states, "If happiness were a sports team, gratitude would be its star athlete."

Two well-documented methods for cultivating gratitude were described in the earlier article—keeping a gratitude journal and expressing gratitude to another person each week. Below are several more techniques derived from PP Coach Derrick Carpenter that you can experiment with to increase your sense of gratitude (www.happify.com).

Feel the Music

Seek out a quiet, private space in which you can put on a pair of headphones and listen to some favorite tunes. Before you begin, spend a minute considering what you like about this particular music. Then, sit back and enjoy!

Inspired Meditation

Take a few minutes to think about a place that has special meaning for you. Close your eyes and vividly imagine yourself in that place. What sounds do you hear? What colors and sensations do you experience? What aromas fill the space? Name at least three things you appreciate about this place.

Social Connection and Gratitude

When you connect with your partner, friends or family, make gratitude-sharing a part of your "catching up" routine. Share one thing from your day that you are grateful for and ask them to do the same.

Thank You Card with a Twist

Pick up a blank card from the store or your collection at home. During the next week, pay attention to the unexpected ways in which people in your life show support and care for you. When you've found the right contender, write a few heartfelt sentences that express your appreciation for what this person did for you and share it.

Silver Lining

Next time you're in the shower or tub, contemplate a significant challenge in your life, past or present. Then, identify at least one good thing that has resulted from this challenge. Perhaps the result is a person you have met or gotten to know better, a trait you've developed, a lesson you've learned or something else altogether. Take a few minutes to appreciate this outcome.

Roadway Gratitude

During your daily commute or while running errands, use each red light as an opportunity to reflect upon one thing you are grateful for that happened today.

Special Delivery

Think of a book you greatly appreciate. It might be your favorite fiction or a book that contained just what you needed at a particular time in your life. Think about someone you know who might enjoy or similarly benefit from the book and share a copy with them.

Let Me Count the Ways

The next time you say "I love you," add a "because _____." Fill in the blank with something about that person you truly appreciate.

State Bar Practice Section and Young Lawyers Division Leadership Opportunities

Apply for a board position! A few of the benefits of involvement are networking, community involvement and education. Though each group is different, leadership responsibilities include attending board meetings in person or by teleconference (most groups meet monthly or every other month), planning continuing legal education programs, organizing social events for group members, working on community outreach programs and even involvement in legislative activities. See pages five and six for more information.

CELEBRATE

PRO BONO

www.celebrateprobono.org

OCTOBER 2016: The American Bar Association has dedicated an entire week in October to the **"National Celebration of Pro Bono."** In New Mexico, the local Judicial District Court Pro Bono Committees have extended this celebration to span the entire month of October (and part of September). The committees are hosting a number of pro bono events across the state, including free legal fairs, clinics, recognition luncheons, Continuing Legal Education classes and more!

1st JUDICIAL DISTRICT:

Pro Bono Appreciation Luncheon and CLE
October 17, 2016 from 11:30 AM – 1:30 PM
Hilton of Santa Fe
(100 Sandoval St., Santa Fe, NM 87501)
CLE and luncheon details TBA

Free Legal Fair
October 22, 2016 from 10 AM – 1 PM
Mary Esther Gonzales Senior Center
(1121 Alto St., Santa Fe, NM 87501)

2nd JUDICIAL DISTRICT:

Law-La-Palooza Free Legal Fair
October 20, 2016 from 3 – 6 PM
Alamosa Community Center
(6900 Gonzales Rd. SW #C, Albuquerque, NM 87121)

4th JUDICIAL DISTRICT:

Free Legal Fair and Pro Bono Appreciation Luncheon
October 18, 2016 from 9 AM – 2 PM
New Mexico Highlands University
(Student Union Building; 800 National Ave., Las Vegas, NM 87701)

5th JUDICIAL DISTRICT (CHAVES):

Free Legal Fair
October 7, 2016 from 1:30 PM – 4:30 PM
Roswell Adult and Senior Center
(807 N. Missouri Ave., Roswell, NM 88201)

5th JUDICIAL DISTRICT (LEA):

Free Legal Fair
October 14, 2016 from 1 PM – 3 PM
Hobbs City Hall
(200 E. Broadway, Hobbs, NM 88240)

6th JUDICIAL DISTRICT (LUNA):

Free Legal Fair
October 28, 2016 from 10 AM – 1 PM
Luna County District Court
(855 S. Platinum, Deming, NM 88030)

9th JUDICIAL DISTRICT:

Pro Bono Appreciation Bench and Bar Mixer
October 21, 2016 from 3 PM – 6 PM
K-BOB's Steakhouse
(1600 Mabry Dr., Clovis, NM 88101)

12th JUDICIAL DISTRICT (LINCOLN):

Free Legal Fair
October 29, 2016 from 10 AM – 2 PM
Ruidoso Community Center
(501 Sudderth Dr., Ruidoso, NM 88345)

To learn more about any of the events below, or to get involved with your local pro bono committee, please contact Aja Brooks at ajab@nmlegalaid.org or (505)814-5033.
Thank you for your support of pro bono in New Mexico.

October

5 **New Mexico Film Industry and Film Tax Credit**
1.0 G, 0.5 CPE
Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

5 **Managing Employee Leave**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

5 **Ahead of the Curve: Risk Management for Lawyers**
3.0 G
Live Seminar, Albuquerque
CNA/Health Agencies
www.healthagencies.com/lawyers/cna-seminars/

6 **Ahead of the Curve: Risk Management for Lawyers**
3.0 G
Live Seminar, Santa Fe
CNA/Health Agencies
www.healthagencies.com/lawyers/cna-seminars/

6 **2016 New Mexico Health Law Symposium**
5.9 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

7 **Employment and Labor Law Institute**
6.5 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10–14 **Basic Practical Regulatory Training for the Natural Gas Local Distribution Industry**
24.5 G
Live Seminar, Albuquerque
Center for Public Utilities New Mexico State University
business.nmsu.edu

10–14 **Basic Practical Regulatory Training for the Electric Industry**
26.2 G
Live Seminar, Albuquerque
Center for Public Utilities New Mexico State University
business.nmsu.edu

13 **Joint Ventures Between For-Profits and Non-Profits**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

13–14 **34th Annual Advanced Oil, Gas & Energy Resources Law**
10.3 G, 1.7 EP
Video Replay, Santa Fe
State Bar of Texas
www.texasbarcle.com

14 **Citizenfour—The Edward Snowden Story**
3.2 G
Live Seminar
Federal Bar Association, New Mexico Chapter
505-268-3999

14 **Lawyers, Guns & Money**
6.0 G, 1.0 EP
Live Seminar, Roswell
New Mexico Criminal Defense Lawyers Association
www.nmcdla.org

14 **Navajo Law Seminar**
6.0 G, 2.0 EP
Live Seminar, Albuquerque
Sutin, Thayer & Browne PC
sutinfirm.com

14–15 **2016 New Mexico Family Law Institute**
10.0 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

18 **Professional Liability Insurance: What You Need to Know (2015)**
3.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

18 **Law Enforcement Interrogation Techniques and Tactics in Criminal Trials (2015)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

18 **Second Annual State Bar Symposium on Diversity and Inclusion (2016)**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

19 **Advanced Employment Law**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

20 **Annual Conference**
6.6 G
Live Seminar
Workers Compensation Association of Southern New Mexico
575-537-1173

21 **2016 Administrative Law Institute**
4.0 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

21 **Ethics and Cloud Computing**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

21 **Annual Criminal Law Seminar**
10.0 G, 2.0 EP
Live Seminar
El Paso Criminal Law Group Inc.
915-534-6005

Listings in the Bar Bulletin *CLE Calendar are derived from course provider submissions. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@nmbar.org. Include course title, credits, location, course provider and registration instructions.*

October

25 **Fiduciary Standards in Business Transactions: Good Faith and Fair Dealing**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Damages in Personal Injury**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

27 **Spring Elder Law Institute (2016)**
6.2 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **More Reasons to be Skeptical of Expert Witnesses (2015)**
5.0 G, 1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **2015 Federal Practice Tips and Advice From U.S. Magistrate Judges**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **Everything Old is New Again – How the Disciplinary Board Works (Ethicspalooza Redux—Winter 2015 Edition)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **2016 Appellate Bench and Bar Conference**
5.0 G
Live Seminar, Santa Fe
Center for Legal Education of NMSBF
www.nmbar.org

November

1 **Journalism, Law & Ethics (2016 Annual Meeting)**
1.5 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

1 **Law Practice Succession – A Little Thought Now, a Lot Less Panic Later (2015)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

1 **The Rise of 3-D Technology: What Happened to IP? (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

1 **Animal Law: Wildlife and Endangered Species on Public and Private Lands—The Tipping Point 6.0 G**
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

2 **Estate Planning for Religious and Philosophical Beliefs of Clients**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

2 **Top 8 Title Defects—Cured**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

3 **Indian Law in 2016:What Indian Law Practitioners Need to Know**
1.0 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

4 **ADR Institute: Mindful Mediation Skills for the Lawyer (and Non-Lawyer) Handling Conflict Resolution**
5.2 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

10 **Acquisitions of Subsidiaries and Divisions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

10 **Charter School Law in New Mexico**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

10 **Estate Planning and Retirement Benefits**
4.0 G
Live Seminar
Santa Fe Estate Planning Council
www.sfestateplanning.com

11 **Ethics and Identifying Your Client: It's Not Always 20/20**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

14 **Top Estate Planning Techniques**
6.6 G
Live Seminar, Santa Fe
NBI Inc.
www.nbi-sems.com

16 **The Art of Effective Speaking for Lawyers**
4.5 G, 1.2 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

November

16 **Sophisticated Deposition Strategies**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

17 **2016 Attorney-Client Privilege Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **2016 Business Law Institute**
5.5 G, 1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

18 **Ethics and Dishonest Clients**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Immigration and Deportation**
5.0 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Black Lawyers Association
www.newmexicoblacklawyers association.org

22 **Effective Use of Trial Technology (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

22 **Best and Worst Practices Including Ethical Dilemmas in Mediation (2016)**
3.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **CLE at Sea Trip, Western Caribbean Cruise (Nov. 28–Dec. 4)**
10.0 G, 2.0 EP
Center for Legal Education of NMSBF
www.nmbar.org

30 **Navigating the Amenability Process in Youthful Offender Cases (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Environmental Regulations of the Oil and Gas Industry (2016 Annual Meeting)**
1.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **Building Your Civil Litigation Skills**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

December

1 **Piercing the Entity Veil: Individual Liability for Business Acts**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

2 **As Judges See It: Best (and Worst) Practices in Civil Litigation**
6.0 G
Live Seminar, Las Cruces
NBI Inc.
www.nbi-sems.com

2 **Personal Injury Evidence: Social Media, Smartphones, Experts and Medical Records**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

6 **Transgender Law and Advocacy**
4.0 G, 2.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

6 **Medical Marijuana Law in New Mexico**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

7 **HR Legal Compliance: Advanced Practice**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

8 **Structuring Minority Interests in Businesses**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

8–9 **Law and Policy for Neighborhoods Conference**
10.0 G, 2.0 EP
Live Program, Santa Fe
Santa Fe Neighborhood Law Center
www.sfnlc.com

9 **The Ethics of Bad Facts: The Duty to Disclose to the Tribunal**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **Water Rights in New Mexico**
6.0 G
Live Seminar, Albuquerque
NBI Inc.
www.nbi-sems.com

9 **As Judges See It: Top Mistakes Attorneys Make in Civil Litigation**
6.0 G
Live Seminar, Santa Fe
NBI Inc.
www.nbi-sems.com

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective September 23, 2016

Published Opinions

No. 34017	6th Jud Dist Luna CR-12-256, STATE v O ORTIZ (affirm in part and remand)	9/19/2016

Unpublished Opinions

No. 35057	12th Jud Dist Otero CR-13-565, STATE v G WOOD (affirm)	9/19/2016
No. 35395	WCA-13-60469, J PEQUENO v LOWES (dismiss)	9/19/2016
No. 34600	13th Jud Dist Valencia CR-11-236, STATE v L MARQUEZ (affirm)	9/19/2016
No. 35392	2nd Jud Dist Bernalillo LR-14-58, STATE v M GRIEGO (affirm)	9/19/2016
No. 35406	WCA-12-2833, M GLERUP v THAT CAR PLACE (reverse and remand)	9/19/2016
No. 34569	10th Jud Dist Quay CV-13-23, CITY OF TUCUMCARI v RAD WATER (affirm)	9/20/2016
No. 35530	1st Jud Dist Santa Fe CV-15-1348, B STENGEL v NM DEPT OF CORRECTIONS (dismiss)	9/21/2016
No. 34866	2nd Jud Dist Bernalillo JQ-12-85, CYFD v JUDY G (affirm)	9/21/2016
No. 35377	2nd Jud Dist Bernalillo JQ-15-97, CYFD v MARY C (affirm)	9/21/2016
No. 35489	2nd Jud Dist Bernalillo DM-05-5118, C GIERS v B BUDOW (dismiss)	9/21/2016
No. 35571	2nd Jud Dist Bernalillo CV-15-7144, N MERTON v FARMERS INSURANCE	9/21/2016

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

Effective October 5, 2016

Pending Proposed Rule Changes Open for Comment:

There are no proposed rule changes currently open for comment.

Recently Approved Rule Changes Since Release of 2016 NMRA:

		Effective Date
Rules of Civil Procedure for the District Courts		
Rule 1-079	Public inspection and sealing of court records	05/18/16
Rule 1-131	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16
Civil Forms		
Form 4-940	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16
Rules of Criminal Procedure for the District Courts		
Rule 5-123	Public inspection and sealing of court records	05/18/16
Rule 5-615	Notice of federal restriction on right to receive or possess a firearm or ammunition	05/18/16
Rules of Criminal Procedure for the Magistrate Courts		
Rule 6-506	Time of commencement of trial	05/24/16
Rules of Criminal Procedure for the Metropolitan Courts		
Rule 7-506	Time of commencement of trial	05/24/16
Rules of Procedure for the Municipal Courts		
Rule 8-506	Time of commencement of trial	05/24/16
Criminal Forms		
Form 9-515	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16
Children's Court Rules and Forms		
Rule 10-166	Public inspection and sealing of court records	05/18/16
Rule 10-171	Notice of federal restriction on right to receive or possess a firearm or ammunition	05/18/16
Form 10-604	Notice of federal restriction on right to possess or receive a firearm or ammunition	05/18/16
Second Judicial District Court Local Rules		
LR2-400	Case management pilot program for criminal cases	02/02/16

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us.

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-063

No. 33,781 (filed April 20, 2016)

AMERICAN CIVIL LIBERTIES UNION
OF NEW MEXICO,
Plaintiff-Appellee,
v.
DIANNA J. DURAN,
Defendant-Appellant,
and
CHRISTIANA SANCHEZ,
Defendant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
CLAY CAMPBELL, District Judge

ALEXANDRA FREEDMAN SMITH
ACLU OF NM FOUNDATION
Albuquerque, New Mexico
PHILIP B. DAVIS
LAW OFFICE OF PHILIP B. DAVIS
Albuquerque, New Mexico
for Appellee

HECTOR H. BALDERAS
Attorney General
Santa Fe, New Mexico
SCOTT FUQUA
Special Assistant Attorney General
FUQUA LAW & POLICY, P.C.
Santa Fe, New Mexico
for Appellant

Opinion

James J. Wechsler, Judge

{1} This case presents yet another opportunity to interpret provisions of our Inspection of Public Records Act—this time with respect to the district court's award of attorney fees.

{2} Appellant, former Secretary of State Dianna Duran, appeals the district court's order granting attorney fees.[1] Appellant's primary argument is premised upon her assertion that the final responsive records to Appellee American Civil Liberties Union of New Mexico's public records request were produced on May 25, 2012. Taking this assertion as true, Appellant argues that her production of any records after May 25, 2012 could not form the basis of "successful" litigation under the statute either because (1) the subsequently produced records were non-responsive or (2) Appellee already possessed the records at the time of production. In a related claim, Appellant argues that the district court's award of attorney fees accrued after May 25, 2012 was not "reasonable" as that word is used in the statute because Appellee's sole purpose in continuing the litigation beyond that date was to investigate the validity of Defendants' claim that they possessed no additional responsive records.

{3} We conclude that Appellant violated the Inspection of Public Records Act by withholding responsive records until the last of those records were produced on June 5, 2013. Because additional responsive records that were previously withheld were produced during the pendency of the litigation, Appellee's litigation was "successful" as that word is used in the statute. For the same reason, and for additional reasons related to Defendants' conduct as discussed below, the district court's grant of attorney fees was also "reasonable."

{4} Appellant's secondary argument is that the nature of Appellee's settlement offer rendered the accrual of any post-settlement-offer attorney fees unreasonable under the statute. Because this argument is also unsupported by New Mexico law, we affirm.

BACKGROUND

{5} On March 15, 2011, the New Mexico Secretary of State's Office announced that an internal investigation had revealed one hundred seventeen instances in which foreign nationals registered to vote in New Mexico and that, in thirty-seven of those instances, the illegal registrants had actually voted in New Mexico elections. In response to this statement, Appellee filed a request with the Secretary of State's Office, pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2013), requesting production of all public records that supported the allegations. The same day, Appellee filed a similar IPRA request with the Governor's Office.

{6} The Governor's Office produced various public records relevant to this litigation in response to Appellee's IPRA request. Among these records was an email thread (the Colorado emails) dated March 8, 2011 to March 9, 2011. The Colorado emails began with an email from the Colorado Department of State that was forwarded to the Secretary of State's Office Bureau of Elections Director, Bobbi Shearer, and continued as a discussion between Shearer and the Director of Policy and Planning for the Governor's Office, Matt Kennicott. The emails between Shearer and Kennicott discussed a proposed database cross-check between the Secretary of State's Office and the Motor Vehicle Division of the Department of Taxation and Revenue (MVD) for the purpose of determining whether non-citizens were registered to vote in New Mexico.

{7} On March 31, 2011, Defendants formally responded to Appellee's IPRA request. Defendants did not produce the Colorado emails but did produce twelve redacted emails and one letter addressed to a New Mexico assistant attorney general. Additionally, Defendants described certain responsive records that were being withheld under IPRA disclosure exceptions. Defendants did not disclose the existence,

[1]In the district court, this case was captioned American Civil Liberties Union of New Mexico v. Dianna J. Duran and Christiana Sanchez. Sanchez is not a party to this appeal. When appropriate, we refer to Duran and Sanchez collectively as Defendants.

or justify the withholding, of the Colorado emails but instead specifically stated "[t]he Secretary of State's Office does not possess any [responsive] documents that reflect communications between the Office of the Secretary of State and the Governor's Office[.]"

{8} On April 11, 2011, Appellee sent a second IPRA request to the Secretary of State's Office. This letter supplemented Appellee's original IPRA request with requests for the production of additional records. Defendants produced no additional records in response to Appellee's supplemental request.

{9} On July 20, 2011, Appellee filed this lawsuit to force the production of public records allegedly withheld in violation of IPRA. In its complaint, Appellee alleged that the Colorado emails provided the impetus for the Secretary of State's Office investigation into whether non-citizens were illegally registered to vote in New Mexico. The complaint disputes Defendants' denial of the existence of responsive communications between the Secretary of State's Office and the Governor's Office by reference to the Colorado emails.

{10} In their answer, Defendants acknowledged the existence of, and confirmed certain content within, the Colorado emails. During the discovery process, Defendants produced additional records, including spreadsheets used by the Secretary of State's Office in its review of New Mexico's voter registration file and voter registration cards for one hundred fifteen of the one hundred seventeen individuals that the investigation identified as registered voters despite not being New Mexico residents.

{11} On October 20, 2011, Defendants provided a privilege log that outlined certain documents withheld from production, including: (1) a list of one hundred seventeen names that appeared in both the Secretary of State's voter file and the MVD foreign national database (list of 117), and (2) a list of thirty-seven names of registered voters who may not be New Mexico citizens but appear to have voted in a New Mexico election (list of 37).

{12} On January 12, 2012, Appellee filed a motion for summary judgment, requesting that the district court order production of the two lists, as well as all other records responsive to its IPRA requests. The lists then became the subject of an email exchange between the parties. On February 6, 2012, Appellee sent a letter to Defendants outlining its understanding as to the existence of the two lists. On February 13, 2012, Defendants responded with a letter intended to clarify "confusion about the state of the documents at issue." As clarification, the letter stated, "[w]hen I say that the Secretary of State's Office did not create such lists, what I mean is that such lists do not physically exist. . . . In identifying those voters, the Secretary of State did not generate any document separately listing them."

{13} The next day, Appellee responded with a letter stating, "[g]iven the confusion surrounding the public records, [Appellee] feel[s] that it is necessary to depose [Appellant] in order to obtain her responses under oath." Appellee then filed notice to conduct an in-person deposition of Appellant.

{14} On March 2, 2012, Defendants filed their response to Appellee's motion for summary judgment. The response stated that (1) the list of 37 does not exist, (2) the list of 117 would be produced upon issuance of a district court order clarifying non-liability under state law, and (3) "[t]he Secretary either has already produced or will immediately produce" all other responsive documents. Attached to Defendants' response was an affidavit of the Secretary of State's Office Chief of Staff, Kenneth Ortiz. The affidavit outlined the investigative procedure leading to the March 15, 2011 announcement and described the generation of the list of 117. The affidavit additionally stated that a physical copy of the list of 37 was never generated.

{15} On March 6, 2012, Defendants filed a motion for protective order to prevent Appellee from conducting an in-person deposition of Appellant. In support of the motion, Defendants argued that Appellant had no personal knowledge of the investigative process or documents at issue. Appellee filed a response outlining Defendants' confusion as to the existence of the list of 117 and the list of 37, as well as motions to depose Ortiz and Shearer. Appellee specifically noted,

> Given the wildly conflicting accounts of the documents which may or may not exist . . . [Appellee] must depose [Appellant] to ascertain whether there is, in fact, a list of thirty seven people who allegedly voted illegally, and whether there are additional documents that are responsive to [Appellee's] IPRA requests that have not been produced. Given the multiple inconsistent and contradictory claims as to whether these documents exist at all, it is unreasonable to expect [Appellee] to rely on representations made by counsel instead of obtaining sworn statements.

Shearer's deposition was conducted on May 4, 2012. During this deposition, Shearer was presented with the Colorado emails, which she authenticated.[2]

{16} The district court entered a stipulated order of partial summary judgment as to the list of 117. In doing so, the court noted that the "remaining issues and requests for relief . . . are not affected by this [s]tipulation and remain pending." The list of 117 was produced on May 25, 2012.

{17} In June 2012, reports circulated indicating that executive branch employees were using private or personal email accounts to conduct state business. *See* Dan Boyd, *Private Email Flap Grows*, *Albuquerque Journal*, June 16, 2012, http://www.abqjournal.com/113169/news/private-email-flap-grows.html. Following these reports, Appellee requested production of all emails sent to or from private email accounts that were responsive to its IPRA requests. No responsive emails were produced in response to Appellee's request. On June 25, 2012, Appellee filed a motion to compel production of all responsive public records, including any emails sent to or from private email accounts. Defendants responded, arguing that Appellee lacked good faith to allege such emails existed and denying that any responsive emails exist. The district court granted Appellee's motion, ordering:

> 1. Defendants are *ordered to produce all [e]mails pertaining to the matters described in the two IPRA requests in this case*, including all [e]mails sent to and/or copied to and/or received by [Appellant] on private and personal email accounts.
>
> 2. Within 15 days after the entry of this [o]rder, *[Appellant] shall submit a sworn [a]ffidavit to [Appellee] verifying that all [e]mails pertaining to the matters*

[2]The pages of deposition testimony in which Shearer authenticates the Colorado emails are not included in the record proper. However, the parties agree that the authentication occurred.

> *described in the two IPRA requests in this case*, including emails sent and received on private and personal email accounts *have been produced*. If there are no [e]mails pertaining to the matters described in the two IPRA requests in this case that were sent to and/or copied to and/or received by [Appellant] on private and personal email accounts, she shall so state.

(Emphasis added.) On the same day, the district court granted Defendants' motion for protective order, prohibiting Appellee from conducting an in-person deposition of Appellant. In lieu of an in-person deposition, Appellee was granted permission to conduct a deposition on written questions. Appellee submitted one hundred eighty-eight deposition questions to be answered by Appellant.

{18} In response to the district court's order, on August 24, 2012, Appellant submitted an affidavit stating, in pertinent part,

> 3. I did not use any personal or private email account to communicate to anyone any information related to the March 2011 investigation conducted by my [o]ffice with respect to the two IPRA requests in this case.
>
> 4. *There are no emails sent to and/or received or copied to and/or received by me* on private or personal email accounts *pertaining to the matters described in the two IPRA requests in this case*.

(Emphasis added.) Defendants then filed a second motion for a protective order seeking protection from one hundred fifty-seven of the one hundred eighty-eight deposition questions submitted by Appellee. By way of background in their motion, Defendants outlined the various public records produced to date and stated "the Secretary of State's Office has produced all of the documents in its possession, custody, or control responsive to [Appellee's] requests." Appellee submitted a response in opposition that detailed Defendants' "[h]istory of [n]on-[d]isclosure in the [l]itigation[.]" The Colorado emails featured prominently in this argument.

{19} On October 18, 2012, Appellee filed a motion for finding of contempt, claiming that Appellant's August 24, 2012 affidavit was non-responsive to the court's order in that it failed to "verify" that all responsive emails had been produced. The motion specifically noted that "[t]he failure of the [Secretary of State] to produce [the Colorado emails] . . . casts doubt over Defendants' repeated representation that all records responsive to [Appellee's] IPRA requests have been produced." Appellee filed a second motion to conduct an in-person deposition of Appellant, stating that Appellant "has shown through her refusal to answer [one hundred fifty-seven out of one hundred eighty-eight] deposition questions that she holds an unnecessarily narrow interpretation of what documents are responsive to [Appellee's] IPRA requests[.]"

{20} On November 5, 2012, Defendants filed a response to Appellee's motion for contempt. As a basis for their opposition, Defendants argued that (1) IPRA did not require production of the Colorado emails because Appellee already possessed the Colorado emails, and, in the alternative, (2) IPRA did not require production of the Colorado emails because they were non-responsive. Defendants did not produce the Colorado emails at this time.

{21} Following the filing of additional responses and replies, the district court held a hearing on Appellee's motion to compel on January 7, 2013. During the hearing, Appellee highlighted the confusion surrounding the existence and production of the list of 117 and the list of 37. Appellee then argued that Defendants' failure to provide all responsive documents or to comply with the court's order compelling production justified the continuing litigation. Defendants argued at length that the Colorado emails are non-responsive to Appellee's IPRA requests, and, therefore, were not subject to the court's order. The district court denied Appellee's motion, but made the following comments:

> [W]hat I definitely remember saying to [counsel for Defendants] was [that] your client is begging to be deposed. So I assumed that that statement is why I have a couple of pending motions to depose your client, in addition to everything else. Because your client is being asked very direct questions, and your client appears to be answering the questions that she wants to answer or having people answer questions that she wants to have them answer[] and not fully answering the questions. So I mean, I can appreciate where the [Appellee's] anxiety comes from.

The court entered a second order requiring that Appellant "shall submit a sworn affidavit to [Appellee] verifying that all emails pertaining to the matters described in the two IPRA requests . . . have been produced." The court also issued orders denying Appellee's motion to conduct an in-person deposition of Appellant and granting in part Defendants' second motion for a protective order. Appellant was required to answer one hundred forty-five of the proposed one hundred eighty-eight deposition questions.

{22} Appellant's deposition on written questions was conducted on April 30, 2013. Following the deposition, Defendants contacted Appellee by email to determine whether unresolved issues remained. Appellee responded that materials responsive to its IPRA requests, specifically the Colorado emails, remained unproduced. Defendants ultimately produced the Colorado emails on May 23, 2013 and attachments thereto on June 5, 2013. The district court granted a stipulated dismissal, except as to attorney fees, costs, and expenses, on September 3, 2013.

{23} The district court heard arguments related to Appellee's fee motion on March 12, 2014. At this hearing, and in its subsequent order, the district court found that "counsel's hours spent in this case for which [Appellee] seeks compensation were all reasonable and necessary to [Appellee's] successful prosecution of this IPRA lawsuit." Attorney fees were granted for the work of merits counsel in the amount of $71,239.50. Attorney fees were granted for the work of fee counsel in the amount of $15,729.00. This appeal resulted.

STANDARD OF REVIEW

{24} Appellate courts review an award of attorney fees for abuse of discretion. *Lebeck v. Lebeck*, 1994-NMCA-103, ¶ 27, 118 N.M. 367, 881 P.2d 727. A district court abuses its discretion when "a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." *Sims v. Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930 P.2d 153. To the extent that Appellant's arguments require statutory interpretation, we apply de novo review. *State v. DeAngelo M.*, 2015-NMSC-033, ¶ 7, 360 P.3d 1151.

RESPONSIVENESS OF PUBLIC RECORDS IN IPRA LITIGATION

{25} Section 14-2-1(A) of IPRA provides that "[e]very person has a right to inspect public records" unless a specified exception precludes disclosure. IPRA's purpose—to promote the existence of (1) an

informed electorate and (2) transparency in governmental affairs—is documented in the legislation itself and in our appellate case law. *See* § 14-2-5 ("Recognizing that a representative government is dependent upon an informed electorate, the intent of the [L]egislature in enacting [IPRA] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees."); *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 16, 150 N.M. 64, 257 P.3d 884 ("IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve."); *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34, 90 N.M. 790, 568 P.2d 1236 ("The citizen's right to know is the rule and secrecy is the exception."), *superseded on other grounds by statute as stated in Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, ¶¶ 14-16, 283 P.3d 853.

{26} To initiate a public records request, any person may contact the records custodian at the desired governmental entity and "identify the records sought with reasonable particularity." Section 14-2-8(C). Email correspondence by state employees constitutes a public record as defined in the statute. *See* § 14-2-6(G).

{27} Appellant's argument in this case hinges, in substantial part, on whether the Colorado emails are responsive to Appellee's IPRA request. While the term "responsive" is appropriately used by litigants to describe the nature of public records, it does not appear in the statute. *See* §§ 14-2-1 to -12. To determine whether a public record is "responsive," courts must evaluate whether the IPRA request identified the record "with reasonable particularity." Section 14-2-8(C).

{28} The Colorado emails began with an email from Judd Choate, Director of the Colorado Division of Elections. Choate's email was addressed to the National Association of State Election Directors (NASED). The email stated, in pertinent part,

> At 1pm this afternoon . . . Colorado Secretary of State Scott Gessler will hold a news conference to discuss legislation under consideration in the Colorado House that would allow the Colorado Department of State to spot check and investigate voter registrations for the possibility that non-citizens are 1) currently registered to vote, 2) are being accidentally registered to vote, or 3) are willfully seeking to register in violation of both state and potentially federal law.
>
> Simultaneous with this press conference, the Department of State will issue a report outlining the research we have undertaken to determine the number of persons currently registered who may not be U.S. citizens. In short, that research has found that there are certainly hundreds, and likely thousands, of non-citizens who are registered to vote in the state of Colorado.
>
> I wanted to warn you that this report will be issued in case it becomes a national story requiring that you address the issue relative to your state.

Choate's email was forwarded by NASED personnel to Shearer. Shearer forwarded Choate's email to Kennicott with comments stating, "Colorado is going to announce this today. We do already have an agreement in place [between the Secretary of State's Office], [MVD], and [S]ocial [S]ecurity to cross-check. If MVD would do it, we could run a cross-check this week. What do you think? Tell MVD to coordinate with us?" Shearer and Kennicott then exchanged emails discussing implementation of a cross-check of the Secretary of State's Office and MVD databases.

{29} Following the March 15, 2011 announcement, Appellee submitted two separate IPRA requests: one on March 16, 2011 and another on April 11, 2011. In these requests, Appellee requested nine types of documents related to the Secretary of State's Office investigation into potential voter fraud in New Mexico. One of the requests included "[a]ny documents that reflect communications between the Office of the Secretary of State and any one at the Governor's Office related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico."

{30} While Appellee's request is somewhat unwieldy as written, it can be deconstructed using basic grammar. The use of "and/or" within the request indicates that the request contemplates both conjunctive and disjunctive readings. Because the request uses "and/or" twice, numerous possible readings are included within the request, including, "Any documents that reflect communications between the Office of the Secretary of State and any one at the Governor's Office related to alleged *or* proven voter fraud involving foreign nationals *or* any irregularities in the master list of registered voters in New Mexico." Since a disjunctive reading anticipates removal of the content following the word "or," another grammatically correct reading is, "Any documents that reflect communications between the Office of the Secretary of State and any one at the Governor's Office related to alleged voter fraud involving foreign nationals."

{31} The subject matter of Choate's email to NASED was alleged voter fraud involving foreign nationals. Choate's email was forwarded between personnel in the Secretary of State's Office and the Governor's Office. Appellant argues on appeal that the Colorado emails are not responsive because they do not contain allegations of voter fraud in New Mexico. This argument is misplaced given the construction of the request. Appellee's IPRA request was crafted "with reasonable particularity" to make the Colorado emails responsive to the request. Section 14-2-8(C).

SUCCESS IN IPRA LITIGATION

{32} IPRA's enforcement provision provides that "[t]he court shall award damages, costs and reasonable attorney[] fees to any person whose written request has been denied and is *successful* in a court action to enforce the provisions of [IPRA]." Section 14-2-12(D) (emphasis added). Appellant argues that Appellee is not entitled to an award of attorney fees accrued after May 25, 2012 because Appellee's IPRA litigation after May 25, 2012 was not "successful" as that word is used in IPRA. As a basis for this argument, Appellant claims that no responsive documents were produced after May 25, 2012. As discussed immediately above, this argument fails because the Colorado emails, produced by Defendants on May 23, 2013 and June 5, 2013, were responsive to Appellee's IPRA request.

{33} Alternatively, Appellant argues that production of the Colorado emails cannot constitute success under IPRA because Appellee already had possession of the Colorado emails at the time litigation was filed, and, as a result, Defendants did not withhold or deny Appellee access to the records. To determine whether IPRA litigation that results in the production of responsive records already in a litigant's possession is "successful" as that word is used in IPRA, we apply principles of statutory construction.

{34} Because the word "successful" is not defined, we must determine its meaning in the context of the statute. An appellate court's "primary purpose in interpreting a statute is to ascertain and give effect to legislative intent." *Maes v. Audubon Indem. Ins. Grp.*, 2007-NMSC-046, ¶ 11, 142 N.M. 235, 164 P.3d 934 (internal quotation marks and citation omitted). To ascertain legislative intent, we look first to the plain meaning of the words of the statute. *See State v. Tsosie*, 2011-NMCA-115, ¶ 13, 150 N.M. 754, 266 P.3d 34 ("We determine legislative intent by first looking at the words chosen by the Legislature and the plain meaning of those words." (alteration, internal quotation marks, and citation omitted)).

{35} We frequently use dictionary definitions to assist in determining the plain meaning of statutory language. *See, e.g.*, *State v. Boyse*, 2013-NMSC-024, ¶ 9, 303 P.3d 830 ("Under the rules of statutory construction, [the appellate courts] first turn to the plain meaning of the words at issue, often using the dictionary for guidance."). Dictionary definitions of the word "successful" include, "resulting or terminating in success: having the desired effect[,]" *Webster's Third New International Dictionary of the English Language Unabridged* 2282 (3d ed. 1993), and "accomplishing an aim or purpose[.]" *New Oxford American Dictionary* 1737 (3d ed. 2010). These definitions, as well as the context in which the word "successful" is used in the statute, appear to evince a legislative intent to award attorney fees generated during litigation that secures production of previously denied responsive documents. *See* § 14-2-12(D); *Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091, ¶ 9, 287 P.3d 318 (holding that "the party who unsuccessfully resists a statutorily-compelled, socially beneficial action" is subject to an award of attorney fees); *see also Faber v. King*, 2015-NMSC-015, ¶ 31, 348 P.3d 173 (stating that a "successful litigant . . . obtain[s] the documents he or she sought in the first place").

{36} Appellant's argument that the production of documents already in Appellee's possession cannot form the basis of "successful" IPRA litigation harkens back to our appellate courts' application of the "rule of reason" in IPRA litigation, an option now foreclosed by our Supreme Court. *See Republican Party of N.M.*, 2012-NMSC-026, ¶ 16 ("[C]ases applying the 'rule of reason' to all of the exceptions enumerated by the Legislature are overruled to the extent they conflict with this [o]pinion.").

{37} Section 14-2-1(A), which provides public policy exceptions to IPRA's disclosure requirements, does not include prior possession as a legitimate ground for withholding public records. *See Republican Party of N.M.*, 2012-NMSC-026, ¶ 16 ("[C]ourts now should restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA[.]"). Appellant cites no cases supporting the proposition that an IPRA litigant's possession of a public record negates an agency's duty to respond. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 ("[Our appellate courts] assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority.").

{38} Additionally, we disagree with Appellant's position that IPRA's sole purpose is to make government records—that is, the tangible documents—available to the public. Section 14-2-5 of IPRA provides that "the intent of the [L]egislature in enacting [IPRA] is to ensure . . . that all persons are entitled to the greatest possible *information* regarding the affairs of government[.]" (Emphasis added.) While information can come in the form of tangible documents, it can also be gathered based upon an agency's denials. *See* § 14-2-11(B) ("If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial."). Denials are valuable information-gathering tools. With respect to any given record request, the absence of either (1) production of responsive records or (2) a conforming denial based upon a valid IPRA exception sends a strong message to the requester that no responsive public record exists.

{39} Our independent review reveals that numerous other state courts interpret their own public records legislation to require production of responsive documents under these circumstances. *See, e.g.*, *Wichita Eagle & Beacon Pub. Co. v. Simmons*, 50 P.3d 66, 87 (Kan. 2002) (holding that a governmental agency may not "refuse to produce records because such records are available from another or a more 'appropriate' source"); *Smith v. Sch. Dist. No. 45*, 666 P.2d 1345, 1349 (Or. Ct. App. 1983) (holding that a "public body may not refuse to produce records subject to inspection under [the act] just because the requester already possesses them"); *Neighborhood All. of Spokane Cty. v. Cty. of Spokane*, 261 P.3d 119, 131 (Wash. 2011) (holding that "[t]he fact that the requesting party possesses the documents does not relieve an agency of its statutory duties").

{40} As late as January 16, 2013, the district court ordered Appellant to verify by affidavit that all responsive emails to Appellee's IPRA requests had been produced. Appellant continued to withhold the Colorado emails until June 5, 2013. Because Appellee's litigation secured the production of previously denied responsive public records, the litigation was "successful" as that word is used in the statute. *See* § 14-2-12(D).

REASONABLENESS OF ATTORNEY FEES IN IPRA LITIGATION

{41} IPRA's enforcement provision also requires courts to grant only "reasonable" attorney fees to successful litigants. *See* § 14-2-12(D) ("The court shall award damages, costs and *reasonable* attorney[] fees[.]" (emphasis added)). The reasonableness of attorney fees is measured against an established set of objective standards and criteria. *Behrens v. Gateway Court, LLC*, 2013-NMCA-097, ¶ 34, 311 P.3d 822. These standards and criteria include:

> (1) the time and labor required—the novelty and difficulty of the questions involved and skill required; (2) the fee customarily charged in the locality for similar services; (3) the amount involved and the results obtained; (4) the time limitations imposed by the client or by the circumstances; and (5) the experience, reputation and ability of the lawyer or lawyers performing the services.

Rio Grande Sun, 2012-NMCA-091, ¶ 13 (internal quotation marks and citation omitted). These criteria relate generally to mathematic calculations that a district court must conduct in the face of competing arguments by the parties: (1) what hourly rate is the lawyer entitled to per hour, (2) how many hours should the project require, and (3) what do other lawyers bill for similar work? *See id.* These quantitative questions are not at issue in this case. Instead, Appellant's challenge is to the reasonableness of the litigation itself after May 25, 2012—an overarching notion that must be addressed through evaluation of the "results obtained" in the litigation. *Id.* A factual determination by the district

court that an IPRA fee request is reasonable when weighed against the results obtained in the litigation will be disturbed only when the award "is contrary to logic and reason." *Id.* ¶ 10 (alteration, internal quotation marks, and citation omitted).

{42} The purpose of IPRA's enforcement provision is to "promote compliance and accountability" from governmental entities. *Faber*, 2015-NMSC-015, ¶ 28. The provision effectively amounts to a "fee-shifting statutory scheme[]" that "encourages individuals to enforce IPRA on behalf of the public" and "ensure[s] that the entire process is virtually costless to a successful litigant." *Id.* ¶¶ 31-32 (internal quotation marks and citation omitted).

{43} Appellant's brief in chief correctly notes that "fees incurred in obtaining documents from a state agency are prima facie reasonable." Appellant then argues that Appellee's prosecution of the IPRA litigation after May 25, 2012 was not directed at obtaining public records, but instead it was "expended in an effort to verify (or disprove) the sworn assertions of the Secretary of State's Office that it had fully responded to Appellee's IPRA request." To summarize this argument, Appellant stated, "it is flatly unreasonable for a state agency to pay the freight for an IPRA litigant's paranoia."

{44} The obvious problem with Appellant's argument is that Appellee was not being paranoid; Defendants were withholding responsive documents. *See, e.g.*, *Cox v. N. M. Dep't of Pub. Safety*, 2010-NMCA-096, ¶ 17, 148 N.M. 934, 242 P.3d 501 ("New Mexico's policy of open government is intended to protect the public from having to rely solely on the representations of public officials that they have acted appropriately." (internal question marks and citation omitted)). From the initial complaint onward, Appellee claimed that Defendants were wrongfully withholding the Colorado emails. Defendants' answer essentially acknowledges their possession of the Colorado emails. Despite repeated references to the Colorado emails by Appellee throughout the litigation, Defendants failed to fully produce the records until June 5, 2013. As such, Appellant's argument that Appellee's litigation efforts were motivated by goals other than obtaining public records, or by mere paranoia, is not legally sound.

{45} Appellant claims that the Colorado emails are not responsive to Appellee's IPRA request. As discussed above, we disagree. But to be clear, this opinion does not hold that a governmental entity is required to produce records that it, in good faith, believes to be unresponsive. However, when such withheld records are subsequently revealed and determined to be responsive, those records may become the basis for an award of attorney fees in IPRA litigation. Our IPRA jurisprudence contemplates in camera review in circumstances in which the applicability of a disclosure exception is in question. *See Republican Party of N.M.*, 2012-NMSC-026, ¶ 49 ("Where appropriate, courts should conduct an in camera review of the documents at issue as part of their evaluation of privilege."). We see no language in the statute or our case law that would prohibit a similar practice with respect to a question of responsiveness.

{46} Appellee's assessment of the veracity of Defendants' claim that all responsive documents had been produced was likely, and understandably, colored by Defendants' initial and ongoing failure to produce the Colorado emails. Against this backdrop, Defendants' subsequent conduct justified Appellee's continued efforts to determine the existence of responsive records.

{47} Two examples stand out to this Court. First, early in the litigation, great confusion—among both the parties and within the Secretary of State's Office—arose as to the existence of the list of 117 and the list of 37. Defendants created this confusion by including these lists in its IPRA privilege log despite later revelations that the lists did not physically exist. While mistakes happen during the course of litigation, it is difficult to comprehend how documents that do not exist in tangible form could appear on an IPRA privilege log; a log that exists solely to request that tangible documents be protected from public disclosure. This confusion could justifiably raise Appellee's concerns as to the reliability of Defendants' claims of full production. Second is Appellant's submission of a non-responsive affidavit in response to the district court's order aimed, presumably, at curtailing this litigation. On August 17, 2012, the district court issued an order requiring that Appellant (1) produce all emails responsive to Appellee's IPRA requests and (2) provide an affidavit stating that no additional responsive emails exist. In response, Appellant submitted an affidavit stating, essentially, that she, individually, did not send or receive any responsive emails. This affidavit failed to comply with the district court's order, and thereby, its deficiencies raised legitimate questions as to whether other documents existed.

{48} Given both the responsiveness of the Colorado emails and the confusion created by Defendants' conduct throughout the litigation, we cannot say that the district court's ruling as to the reasonableness of the fees generated by Appellee during the litigation constituted an abuse of discretion. Because Appellee's actions were reasonable, the district court's award of attorney fees for the period of time between May 25, 2012 and the conclusion of the litigation is consistent with the enforcement provision of IPRA.

THE IMPACT OF A SETTLEMENT OFFER ON THE ACCRUAL OF ATTORNEY FEES IN IPRA LITIGATION

{49} On September 29, 2011, Appellee sent a letter to Defendants for the purpose of "exploring settlement possibilities[.]" This letter was expressly not an offer of settlement but presented conditions under which Appellee would consider settlement. Nearly a year later, Appellee sent a new letter in conformance with Rule 11-408 NMRA that offered to settle the litigation if Defendants complied with five conditions. Two of the five conditions required that Defendants acknowledge "that there are no records that prove that 117 foreign nationals were illegally registered to vote in New Mexico elections" and "that there are no records that prove that thirty-seven (37) foreign nationals had voted in New Mexico elections" as indicated in Appellant's March 15, 2011 statement. Appellant argues that no additional attorney fees should have accrued following Appellee's settlement offer because the terms of the offer did not require that Defendants produce additional responsive records.

{50} "It is the policy of the law and of the State of New Mexico to favor settlement agreements." *Navajo Tribe of Indians v. Hanosh Chevrolet-Buick, Inc.*, 1988-NMSC-010, ¶ 3, 106 N.M. 705, 749 P.2d 90. Settlements entered by the parties "essentially represent contractual agreements." *Lewis v. City of Santa Fe*, 2005-NMCA-032, ¶ 11, 137 N.M. 152, 108 P.3d 558. A valid contract must be supported by an offer, acceptance, consideration, and mutual assent. *Flemma v. Halliburton Energy Servs., Inc.*, 2013-NMSC-022, ¶ 28, 303 P.3d 814. While consideration is an essential component to any contract, courts generally do not weigh the terms of a contract in determining its validity. *See Figueroa v. THI of N.M. at Casa Arena*

Blanca, LLC, 2013-NMCA-077, ¶ 18, 306 P.3d 480 ("[E]very person . . . is entitled to dispose of his property in such manner and upon such terms as he chooses; and whether his bargain be wise and discreet or otherwise, or profitable or unprofitable, are considerations not for the courts of justice, but for the party himself to deliberate upon." (internal quotation marks and citation omitted)).

{51} Appellant appears to argue that the terms of Appellee's settlement offer indicate that Appellee was abusing the IPRA process to extricate inherently political statements. We disagree. The record before this Court indicates that Appellee believed it was entitled to certain public records in Defendants' possession and was willing to negotiate away that right in exchange for alternate concessions.

{52} Even if Appellant's assertion were correct, it does not provide legal support for terminating the accrual of attorney fees after the settlement offer in this case. Nothing precludes an IPRA request from being motivated by something other than a desire to possess the tangible document that is delivered by the responding governmental entity. This fact does not diminish a party's right to the tangible document or to leverage that right in settlement negotiations.

{53} Defendants declined to accept the terms of the settlement offer. As such, Appellee was entitled to continue litigating in order to secure all records responsive to its IPRA requests. Naturally, additional attorney fees accrued during the pendency of the litigation. Neither our independent research, nor Appellant's briefing, establishes legal support for the proposition that the terms of a settlement offer must be inherently connected to the substantive law from which a claim arises. *See In re Doe*, 1984-NMSC-024, ¶ 2 ("[Our appellate courts] assume where arguments in briefs are unsupported by cited authority, counsel after diligent search, was unable to find any supporting authority."). Appellee is entitled to attorney fees accrued after Defendants rejected Appellee's settlement offer.

ABUSE OF DISCRETION

{54} Because we see no misapplication of law in the district court proceedings, we review the district court's award of attorney fees for abuse of discretion. The district court's order expressly stated that "counsel's hours spent in this case for which [Appellee] seeks compensation were all reasonable and necessary to [Appellee's] successful prosecution of this IPRA lawsuit." Appellee expended resources throughout the litigation in an effort to force the production of responsive records. Appellee's efforts were successful and culminated in the final production of responsive records on June 5, 2013. We cannot conclude that the district court's award of attorney fees was "clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." *Sims*, 1996-NMSC-078, ¶ 65.

CONCLUSION

{55} Because the district court's award of attorney fees did not constitute an abuse of discretion, we affirm. Additionally, we conclude that Appellee is entitled to appellate attorney fees and remand to the district court for proceedings consistent with this conclusion.

{56} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

TIMOTHY L. GARCIA, Judge

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-064

No. 33,394 (filed April 26, 2016)

PNC MORTGAGE, a division of PNC BANK National Association,
SUCCESSOR BY MERGER TO NATIONAL CITY MORTGAGE,
a division of NATIONAL CITY BANK f/k/a NATIONAL CITY BANK OF INDIANA,
Plaintiff-Appellee,
v.
DANA ROMERO and EUGENE ROMERO,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
SARAH M. SINGLETON, District Judge

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Opinion

Jonathan B. Sutin, Judge

{1} Defendants-Appellants Dana and Eugene Romero (collectively, the Romeros) appeal from an award of summary judgment in favor of Plaintiff-Appellee PNC Mortgage, which orders that the foreclosure action against the Romeros proceed. The Romeros argue on appeal that there are genuine issues of material fact regarding PNC Mortgage's standing to enforce the Romeros' promissory note and to foreclose the mortgage that secured the note. Because we agree that there are outstanding genuine issues of material fact regarding PNC Mortgage's right to enforce the note at the time it filed its complaint and because PNC Mortgage failed to show that it timely possessed the Romero note as a bearer instrument, we reverse the district court's ruling and remand for further proceedings.

BACKGROUND

The Note, the Mortgage, and the District Court Proceedings

{2} In May 2006, the Romeros signed a promissory note (the Romero note) evidencing a debt in the principal sum of $240,000 to National City Mortgage,[1] a division of National City Bank of Indiana. The Romero note was secured by a mortgage on the Romeros' home (the Romero mortgage). The Romeros made the mortgage payments up to and including January 1, 2010, but thereafter they went into default.

{3} In August 2010, Plaintiff PNC Mortgage, a division of PNC Bank, National Association, successor by merger to National City Mortgage (NCM), a division of National City Bank f/k/a National City Bank of Indiana (NCBI), filed a mortgage foreclosure complaint against the Romeros. PNC Mortgage attached to the complaint a copy of the unindorsed Romero note (hereinafter, the unindorsed note) that identified NCM, a division of NCBI, as the lender. PNC Mortgage also attached a copy of the Romero mortgage to the complaint. The complaint alleged that PNC Mortgage was "the holder of the [m]ortgage . . . pursuant to a name change/merger with current holder of record." Neither the complaint nor the attached documents alleged or showed any details of any successor status or merger. In September 2010, the Romeros filed an answer to the complaint wherein they alleged the affirmative defense of lack of standing to sue.

{4} In November 2012, PNC Mortgage filed a motion for summary judgment contending that it was entitled to judgment because it was the holder of and entitled to enforce the note and mortgage as stated in an affidavit of Courtney M. Ely (the Ely affidavit). As "a duly authorized agent of . . . Plaintiff[,]" Ely stated that "PNC [Bank] is the legal holder" of the Romero note, "a true and correct copy of which is attached to the complaint" and the note was secured by the mortgage, "a true and correct copy of which is attached to the [c]omplaint[.]" In its motion, PNC Mortgage stated that its counsel was in possession of the original note and that it was the successor to the originator of the note and mortgage.

{5} In response to the motion for summary judgment, the Romeros asserted that material issues of fact existed precluding summary judgment. The Romeros denied that PNC Mortgage was the holder of the note and attacked the Ely affidavit because it lacked a statement that it was based on personal knowledge, it stated conclusions, and it was inadmissible hearsay. In addition, the Romeros stated that the note that was attached to the complaint lacked indorsements and was "order paper," that there was no documentation of an assignment of the mortgage, and that nothing supported PNC Mortgage's claim to be the successor to the lender through merger, and therefore, PNC Mortgage lacked standing to foreclose. The Romeros also foreshadowed that PNC Mortgage may offer a "new and different" version of the note later in the proceedings and warned that allowing a second version would be unfair and create undue prejudice.

{6} Attached to their response to PNC Mortgage's motion was an affidavit by Eugene Romero addressing the Romeros' attempts to modify their loan and regarding an inquiry into the owner of their promissory note. Attached to the affidavit was a letter the Romeros received from PNC Mortgage to their qualified written request to PNC Mortgage under the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617 (2012). PNC

[1] As will be discussed in this Opinion, *infra* ¶¶ 3, 7, 8, there also existed an entity named "National City Mortgage Co."Although PNC Mortgage argues that there is a difference between National City Mortgage, a division, and National City Mortgage, a subsidiary, neither party explains the relevance, materiality, or consequences of the distinction.

Mortgage's letter dated September 27, 2012 (the QWR response letter), stated in relevant part that "[y]our loan is in a pool known as GSAA 2006-14 and the Trustee is Bank of America . . .; however, PNC Mortgage is the servicer of your loan and you should continue to contact us for any concerns regarding your mortgage." The QWR response letter also stated that "PNC Mortgage affirms the validity of the debt and requires repayment per the [n]ote and the [m]ortgage until all debt is paid in full. . . . PNC Mortgage will continue to service the above referenced loan, and any collection and foreclosure efforts will continue." In addition, Mr. Romero attached a letter dated May 17, 2012, from PNC Mortgage that stated "[w]e service your loan on behalf of an investor or group of investors that has not given us the contractual authority to modify your loan under the Home Affordable Modification Program."

{7} In response to the Romeros' contention that it lacked standing to enforce the note and to foreclose, PNC Mortgage submitted evidence in the form of certifications from the secretary of National City Bank/PNC Bank, National Association, and merger documentation from the Office of the Comptroller of the Currency. The documents showed that, "[e]ffective July 22, 2006, [NCBI] was acquired by [NCB] and National City Mortgage Co. became a wholly owned subsidiary of [NCB]." In 2008, "National City Mortgage Company merged into [NCB] and became a division of [NCB]." The certificate also noted that NCB, a wholly owned subsidiary of "National City Corporation," became a wholly owned subsidiary in 2008 of The PNC Financial Services Group, Inc., when National City Corporation merged with and into The PNC Financial Services Group, Inc. Effective in 2009, NCB was merged into PNC Bank, National Association, which was a wholly owned subsidiary of PNC Bancorp, Inc., a wholly owned subsidiary of The PNC Financial Services Group, Inc. The result of this complicated showing, none of which is contested by the Romeros, is that, through succession by merger, NCB was merged into PNC Bank in November 2009.

{8} Also among PNC Mortgage's responsive summary judgment documents was a copy of the Romero note. But unlike the copy of the note that was attached to the complaint, this copy of the note contained two undated indorsements (hereinafter, the indorsed note). One indorsement unambiguously stated "Pay to the Order of National City Mortgage Co[.,] a Subsidiary of National City Bank of Indiana" and was signed by a document control specialist on behalf of "National City Mortgage[,] a division of National City Bank of Indiana[.]" The other indorsement, which appears below the foregoing indorsement, stated "Pay to the Order of [_____]" and was signed by the aforementioned document control specialist on behalf of "National City Mortgage Co[.,] a Subsidiary of National City Bank of Indiana." Neither indorsement was dated and neither PNC Mortgage nor the Romeros offered specific evidence regarding the timing of the indorsements.

{9} Based on its reading of the merger documentation it submitted to support summary judgment, PNC Mortgage argued that it established a prima facie case that it was in the same position as the original lender, NCM, and it was in possession of the original note and was the holder of the note. PNC Mortgage also argued that it was entitled to enforce the note, as well as the mortgage, because it is "well-settled that the mortgage 'follows' the note" as indicated in NMSA 1978, Section 55-9-203(g) (2005) of New Mexico's Uniform Commercial Code (UCC).

{10} The district court specifically determined that PNC Mortgage made a prima facie showing that it was the holder of the note and entitled to enforce it based on determinations that PNC Mortgage's predecessor in interest made the note a bearer instrument and that PNC Mortgage was in possession of the original note. *See* NMSA 1978, § 55-1-201(b)(21)(A) (2005) (stating that " 'holder' means . . . the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession"). Thus, the district court agreed that PNC Mortgage had established standing to foreclose and granted summary judgment in favor of PNC Mortgage.

{11} After the district court granted summary judgment, and after the Romeros filed their docketing statement with this Court, the Romeros moved for relief under Rule 1-060(B) NMRA. In their motion, the Romeros argued that our Supreme Court's decision in *Bank of New York v. Romero*, 2014-NMSC-007, 320 P.3d 1, which was decided after the district court granted summary judgment in favor of PNC Mortgage, held that in order to show standing, a plaintiff is required "to demonstrate . . . that it had standing to bring a foreclosure action at the time it filed suit." *Id.* ¶ 17. The Romeros also argued that under *Romero* and *Deutsche Bank National Trust Co. v. Beneficial New Mexico Inc.* (*Deutsche Bank I*), 2014-NMCA-090, 335 P.3d 217, *affirmed in part sub nom. Deutsche Bank National Trust Co. v. Johnston* (*Deutsche Bank II*), 2016-NMSC-013,___ P.3d ___, PNC Mortgage was required to show timely ownership of both the note and the mortgage. According to the Romeros, because PNC Mortgage had not shown that it held or possessed the original note at the time it filed the complaint and, therefore, lacked standing, summary judgment and the order of foreclosure sale should have been deemed void under Rule 1-060(B)(4). The Romeros also argued that the Ely affidavit offered on behalf of PNC Mortgage during the summary judgment proceedings was inadmissible hearsay and inappropriately stated legal conclusions. Finally, the Romeros argued that the existence of the securitized trust, without specific evidence of PNC Mortgage's acquisition of the Romero note, created a genuine issue of material fact.

{12} In response to the Romeros' motion, PNC Mortgage argued that it was different from the plaintiffs in *Romero* because PNC Mortgage was both the successor by merger to the original payee and, as shown by the Ely affidavit, the holder of the Romero note. PNC Mortgage asserted that *Romero* and its progeny were distinguishable because, unlike the *Romero* plaintiffs, PNC Mortgage had a right to enforce the note by virtue of its merger with NCBI. PNC Mortgage further argued that the Ely affidavit properly asserted Ms. Ely's opinions and did not constitute hearsay. PNC Mortgage also asserted that ownership of the note was irrelevant to standing.

Arguments on Appeal

{13} On appeal, the Romeros contend that PNC Mortgage failed to prove it had standing and that, "at a minimum, a trial on the merits rather than summary judgment" is proper. The Romeros first argue that PNC Mortgage did not have standing to bring this foreclosure action because the unindorsed note attached to the complaint indicated that it was payable to NCM, a division of NCBI, and PNC Mortgage failed to provide any evidence confirming its right to enforce the Romero note as a successor in interest. The Romeros do not dispute that PNC Mortgage established that it is the corporate successor to

NCM, but the Romeros dispute that this fact alone establishes a specific interest in the note or the mortgage required to establish standing. The Romeros specifically highlight the fact that PNC Mortgage failed to produce any documentation that accounted for each time the note and mortgage changed hands, including during each bank merger.

{14} The Romeros also argue that the two different copies of the Romero note indicate that PNC Mortgage lacked standing when it filed the foreclosure complaint because the note that came to light during the summary judgment proceedings, the indorsed note, does not indicate that the added indorsements were executed prior to the filing of the complaint or that PNC Mortgage had possession of the indorsed note and was the holder at the time it filed its complaint. Thus, according to the Romeros, providing the indorsed note during the course of litigation was inadequate to show possession of the indorsed note at the time the foreclosure suit was filed.

{15} In addition, the Romeros point out that, after the filing of the complaint, PNC Mortgage's QWR response letter stated the loan was owned by a securitized trust entitled GSAA 2006-14 and that PNC Mortgage was merely the servicer of the note.[2] The Romeros mention that the effective date of a trust usually appears in the name of the trust, in this case 2006, and that the trust here "would most likely have accepted assets . . . (usually [thirty to ninety] days) after the effective date of the trust." Inferring that the trust would have closed by early 2007 and that the merger did not close until after 2007, the Romeros conclude that PNC Mortgage could not have been successor to the original lender by merger. From these circumstances, the Romeros argue that "[t]he strong inference here is that the [n]ote and the [m]ortgage were transferred to the GSAA 2006-14 trust during the 2006 window, and then either the [n]ote or the [m]ortgage (or both) was transferred back to [PNC Mortgage], in its role as servicer for the GSAA 2006-14 trust at some point thereafter." Thus, according to the Romeros, "[PNC Mortgage] has been unable to make a convincing, logical case as to when and if the rights under the [n]ote were negotiated (in UCC parlance) and the rights under the [m]ortgage were transferred to the GSAA 2006-14 trust as principal (with servicing rights retained by [PNC Mortgage])," thereby resulting in a failure of PNC Mortgage's claim of standing. Therefore, according to the Romeros, material issues of fact exist as to whether PNC Mortgage owned, or was the holder or in possession of, either the note or mortgage, when PNC Mortgage filed the foreclosure complaint.

{16} In addition to the deficiencies regarding the note, the Romeros argue that PNC Mortgage failed to show ownership of the Romero mortgage by virtue of an assignment of mortgage, and thus, PNC Mortgage failed to prove standing.

DISCUSSION

Standard of Review

{17} "The [summary judgment] movant need only make a prima facie showing that he is entitled to summary judgment. Upon the movant making a prima facie showing, the burden shifts to the party opposing the motion to demonstrate the existence of specific evidentiary facts which would require trial on the merits. On review, [the appellate courts] consider the whole record for evidence that puts a material fact at issue. If the facts are not in dispute, and only their legal effects remain to be determined, summary judgment is proper." *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331, 825 P.2d 1241 (citations omitted). "An appeal from the grant of a motion for summary judgment presents a question of law and is reviewed de novo." *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 16, 141 N.M. 21, 150 P.3d 971. The appellate courts review the facts "in the light most favorable to the party opposing summary judgment, drawing all inferences in favor of that party." *Gormley v. Coca-Cola Enters.*, 2005-NMSC-003, ¶ 8, 137 N.M. 192, 109 P.3d 280 (internal quotation marks and citation omitted).

Standing

{18} At the time that this case was briefed and argued before this Court, standing in foreclosure cases had been articulated as a jurisdictional prerequisite that "may not be waived and may be raised at any stage of the proceedings, even sua sponte by the appellate court." *Romero*, 2014-NMSC-007, ¶ 15 (internal quotation marks and citation omitted); *Flagstar Bank, FSB v. Licha*, 2015-NMCA-086, ¶ 13, 356 P.3d 1102. However, our Supreme Court recently issued its opinion in *Deutsche Bank II*, 2016-NMSC-013, ¶ 9, wherein the Court took the opportunity "to clarify that standing is not a jurisdictional prerequisite in mortgage foreclosure cases in New Mexico[.]" According to our Supreme Court, only prudential rules of standing apply in such cases. *Id.* ¶¶ 10, 12. The Court recognized that under the prudential rules, a litigant is generally required to demonstrate "injury in fact, causation, and redressability to invoke the [district] court's authority to decide the merits of a case." *Id.* ¶ 13 (internal quotation marks and citation omitted). To effectively show a direct and concrete injury, the Court stated that a party seeking to enforce a promissory note must establish that it has the right to enforce the note under the UCC. *Id.* ¶ 14; *see also* NMSA 1978, § 55-3-301 (1992). Finally, the Court stated that "[a]rguments based on a lack of prudential standing are analogous to asserting that a litigant has failed to state a legal cause of action[,]" and "issues of prudential standing [cannot be waived] prior to the completion of a trial on the merits." *Deutsche Bank II*, 2016-NMSC-013, ¶ 16; *see also* Rule 1-012(H)(2) NMRA ("A defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading permitted or ordered . . . or by motion for judgment on the pleadings, or at the trial on the merits.").

{19} After changing the test from a jurisdictional one to a prudential one, the Court in *Deutsche Bank II* firmly stood with *Romero*'s determination that a party seeking to foreclose is "required to demonstrate under [the UCC] that it had standing to bring a foreclosure action at the time it filed suit." *Romero*, 2014-NMSC-007, ¶ 17; *see Deutsche Bank II*, 2016-NMSC-013, ¶¶ 20-23. Thus, to demonstrate standing on a prudential basis, the foreclosing party "must demonstrate that [it] had the right to enforce the note and the right to foreclose the mortgage at the time the foreclosure suit was filed." *Phoenix Funding, LLC v. Aurora Loan Servs., LLC*, 2016-NMCA-010, ¶ 15, 365 P.3d 8, *cert. granted*,

[2]A loan servicer is generally "responsible for processing payments and supervising any resulting foreclosure or workout." Richard H. Martin, *Proving Standing to Foreclose a Florida Mortgage*, 85 Fla. B.J. 31 (Dec. 2011). However, neither party provided a pooling and servicing agreement or any other documentary evidence that might describe the rights and obligations of PNC Mortgage versus the rights and obligations of the securitized trust.

2016-NMCERT-001, 365 P.3d 8; *Deutsche Bank I*, 2014-NMCA-090, ¶ 8.[3] It remains clear that a party seeking to prove standing must show that it had the right to enforce the note at the time it filed its complaint. *Deutsche Bank II*, 2016-NMSC-013, ¶¶ 20-27. Because we reverse on the issue of the right to enforce the note, we need not address the Romeros' argument regarding the right to foreclose the mortgage.

PNC Mortgage's Right to Enforce the Note

{20} According to New Mexico law, a promissory note is a negotiable instrument, NMSA 1978, § 55-3-104(a), (b), (e) (1992), that can be enforced by "(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to [certain provisions of the UCC]." Section 55-3-301; *Phoenix Funding*, 2016-NMCA-010, ¶ 16. The holder of the note is "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession[.]" Section 55-1-201(b)(21)(A). The bearer is "a person in possession of a negotiable instrument . . . that is payable to bearer or indorsed in blank[.]" Section 55-1-201(b)(5).

{21} We turn to PNC Mortgage's argument that either the indorsed note provided during summary judgment proceedings or the unindorsed note attached to the complaint provided standing.

A. The Indorsed Note

{22} PNC Mortgage argues that the indorsed note provides a basis for standing because PNC Mortgage was in possession of a bearer instrument and thus had the right to enforce the note. This argument was accepted by the district court and served as the basis for granting summary judgment to PNC Mortgage. According to the district court, PNC Mortgage's predecessor in interest made the note a bearer instrument by indorsing it in blank, and PNC Mortgage was in possession of that original note. The district court therefore held that PNC Mortgage thereby established a prima facie case of its right to enforce the note and had established standing.

{23} "A blank indorsement . . . does not identify a person to whom the instrument is payable but instead makes it payable to anyone who holds it as bearer paper." *Romero*, 2014-NMSC-007, ¶ 24. In general, a person or entity in possession of a bearer instrument is considered a holder, and a holder of a bearer instrument is entitled to enforce its terms. Section 55-1-201(b)(21)(A) (defining "holder" under the UCC); § 55-3-301 (" 'Person entitled to enforce' an instrument means (i) the holder of the instrument [or] (ii) a nonholder in possession of the instrument who has the rights of a holder . . . . A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument[.]").

{24} Here, the indorsed note contained two indorsements—a special indorsement and an indorsement in blank. Although neither indorsement is dated, the parties appear to agree that had PNC Mortgage been able to prove timely possession of the indorsed note, it would defeat the Romeros' standing claim. However, the Romeros argue that production of the document is insufficient to prove PNC Mortgage's right to enforce at the time the complaint was filed, as required by *Romero.* We agree.

{25} PNC Mortgage failed to establish that it had a right to enforce the indorsed note. The note came to light years after PNC Mortgage filed its complaint. There exists no evidence that at the time it filed its complaint, PNC Mortgage possessed the original of the indorsed note. Moreover, there exists no evidence as to the date of the indorsements on the indorsed note. As indicated in *Phoenix Funding,* "where an indorsed note is not produced until after the plaintiff has filed for foreclosure and the indorsement is undated, the indorsement is insufficient to show that the plaintiff was the holder of that note at the time the foreclosure complaint was filed." 2016-NMCA-010, ¶ 20; *see also Deutsche Bank II*, 2016-NMSC-013, ¶¶ 24-25 (holding that although an undated indorsement does not impact the validity of the note, presenting an undated indorsed note after the complaint is filed does not prove that a party seeking to foreclose possessed the blank note when it filed suit).

{26} Although we hold that PNC Mortgage failed to prove its prima facie case based on the indorsed note, we believe that it is important to mention that *Romero* did not exist at the time the district court issued its order granting summary judgment and thus the timeliness requirement enumerated in *Romero* was not before the district court in this case. The test for establishing standing in foreclosure actions evolved dramatically during the pendency of this appeal. Our Supreme Court issued *Romero* two months after the filing of the docketing statement in this case. *Romero* definitively stated that a party seeking to foreclose must, as a matter of standing, establish its right to foreclose at the time the complaint is filed. This was not a clearly articulated standard at the time the district court ruled on PNC Mortgage's motion for summary judgment. The Romeros alerted the district court to *Romero* in a motion for post-judgment relief. However, the motion was filed after the case had been appealed to this Court and after the parties had notified this Court of *Romero* in memoranda in the calendaring process. The record on appeal does not contain the district court's order on the motion for post-judgment relief and neither party made a transcript or disc of the hearing available to this Court on appeal. Due to the fact that the appeal continued, we assume that the motion was denied. On appeal, PNC Mortgage does not argue that *Romero* is not applicable. Therefore, in view of *Romero*, the district court's analysis was deficient.

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[3]*Romero* states that a party seeking to foreclose must establish "timely ownership" of the note and mortgage, 2014-NMSC-007, ¶ 17, however, reading the *Romero* opinion as a whole, we believe the Supreme Court's mention of ownership was not intended to legally distinguish that concept from status as a holder of a negotiable instrument under the UCC. The proper inquiry is therefore whether said party is the holder, not the owner. *See* § 55-3-301 ("A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument[.]"); NMSA 1978, § 55-3-110(c)(2) cmt. 3 (1992) ("This provision merely determines who can deal with an instrument as a holder. It does not determine ownership of the instrument or its proceeds."); *Application of the Uniform Commercial Code to Selected Issues Relating to Mortgage Notes*, at 8 (Am. Law Inst. & Unif. Law Comm'n Nov. 14, 2011) ("The rules that determine whether a person is entitled to enforce a note do not require that person to be the owner of the note, and a change in ownership of a note does not necessarily bring about a concomitant change in the identity of the person entitled to enforce the note. . . . The rules concerning transfer of ownership and other interests in a note . . . primarily relate to who, among competing claimants, is entitled to the economic value of the note." (footnote omitted)).

B. The Unindorsed Note

{27} PNC Mortgage also argues that it has standing to enforce the Romero note because the unindorsed note, a copy of which was attached to the complaint, was payable to PNC Mortgage's predecessor in interest. PNC Mortgage argues that it is thus entitled to enforce the note because, as a successor in interest and a holder of the note, it had all of the rights of its predecessor in interest.

{28} As indicated earlier, a holder of a note and a nonholder in possession of a note with the rights of a holder have the right to enforce the note. *See* § 55-3-301. Our Supreme Court clarified in *Romero*, however, that in order to enforce a note made payable to a third party, a successor must prove that it has both physical possession of the note as well as the right to enforce it through a proper indorsement or transfer via negotiation. 2014-NMSC-007, ¶ 21 (holding that "a third party must prove both physical possession *and* the right to enforcement through either a proper indorsement or a transfer by negotiation" and referencing the definition of "negotiation" contained in Section 55-3-201(a)). Mere possession of a note payable to a third party is therefore insufficient. *See Romero*, 2014-NMSC-007, ¶ 23 ("Possession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it."); *see also Deutsche Bank II*, 2016-NMSC-013, ¶ 32 (same). *Romero* therefore requires that a successor in interest seeking to establish its right to foreclose provide some evidence of a proper indorsement or transfer via negotiation as part of its prima facie case. According to our Supreme Court, "the minor up-front compliance costs that foreclosure plaintiffs will incur by confirming that they have the proper documentation *before* filing suit are a small price to pay for protecting the rights of New Mexico homeowners and the integrity of the State's title system by requiring strict and timely compliance with long-standing property law requirements." *Deutsche Bank II*, 2016-NMSC-013, ¶ 22.

{29} In support of its claim that it was a holder of the unindorsed note, PNC Mortgage offered the Ely affidavit stating that "PNC is the legal holder of a Promissory Note ('Note') dated May 02, 2006, and executed by Dana Romero and Eugene Romero, in the original principal sum of $240,000.00[.]" The Romeros argue that the Ely affidavit failed to accomplish its apparent purpose to establish as an undisputed fact that PNC Mortgage had standing.

{30} We give little weight to the Romeros' appellate attack because the Romeros do not point out where in the district court proceedings they sought to strike the Ely affidavit. *See Chavez v. Ronquillo*, 1980-NMCA-069, ¶¶ 19-20, 94 N.M. 442, 612 P.2d 234 ("A party must move to strike an affidavit that violates Rule [1-056(E) NMRA]."). However, we do note that the statement that PNC Mortgage is the "holder" of the note is undoubtedly a legal conclusion. An affidavit submitted in support of a motion for summary judgment "shall set forth such facts as would be admissible in evidence[.]" Rule 1-056(E). Testimony by a lay witness "that seeks to state a legal conclusion is inadmissible." *State v. Clifford*, 1994-NMSC-048, ¶ 20, 117 N.M. 508, 873 P.2d 254; *State v. Elliott*, 2001-NMCA-108, ¶ 22, 131 N.M. 390, 37 P.3d 107. We also note that the Ely affidavit is of questionable value given the lack of evidence in support of the statement that PNC Mortgage was and is a "holder." We hold that the affidavit has no impact as to this Court's decision regarding standing.

{31} PNC Mortgage also argues that because it is a successor in interest, as a matter of law, it had NCBI's right to enforce the unindorsed note. PNC Mortgage bases its argument on the listing of the mergers set out in certifications from the secretary of National City Bank and PNC Bank and in merger documentation from the Office of the Comptroller of the Currency presented to the district court. PNC Mortgage also relies on a provision in the National Bank Act that provides:

> All rights, franchises, and interests of the individual merging banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the receiving association by virtue of such merger without any deed or other transfer. The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests[.]

12 U.S.C. § 215a(e) (2012).

{32} The Romeros argue that, while the National Bank Act offers "a *plausible* scenario" showing how the note "could be enforceable under applicable statutes and case law[,]" that "scenario . . . must yield when the *actual* facts contradict that story." The Romeros point to the "timeline of events" relating to the note, the QWR response letter, the existence of the securitized trust, the mergers, the foreclosure complaint, and the later-indorsed note appearing in summary judgment proceedings, all showing that PNC Mortgage was likely not the holder of the unindorsed note when it filed its complaint. The Romeros also argue that while the merger history may have shown PNC Mortgage as successor to the corporate entity originating the loan, "it does not show how or whether that succession included any interest in the subject [n]ote or [m]ortgage." And the Romeros argue that a reasonable inference can be drawn that the note and mortgage were transferred to the trust before the merger.

{33} The Romeros contend that, altogether, genuine issues of material facts exist as to whether PNC Mortgage possessed and was holder of the unindorsed note at the time the complaint was filed. The Romeros emphasize that because the securitized trust includes "2006" in its name, because the effective date of the trust is usually in the name of the trust, and because trusts typically close thirty to ninety days after the effective date, it is likely that the trust accepted the Romero note in 2006 or early 2007. Because PNC Mortgage did not merge with the Romeros' lender until 2008, the Romeros argue that there is a strong inference that PNC Mortgage was not the successor to the original lender. According to the Romeros, in failing to document the critical chain of events of transfer of the note to PNC Mortgage or to the trust, PNC Mortgage left a "muddled story of chain of title," which created sufficient doubt and confusion with irregularities and material facts in dispute to preclude summary judgment in PNC Mortgage's favor.

{34} We agree that the lack of information regarding the transfer of the unindorsed note creates genuine issues of material fact as to whether PNC Mortgage was the holder of the unindorsed note at the time of filing of the complaint. There is nothing in the record to show that PNC Mortgage offered evidence to confirm that the Romero note was included in the merger. In fact, there is a noticeable lack of documents actually showing that PNC Mortgage received the unindorsed

note and had it in hand at the time PNC Mortgage filed the complaint. Before the indorsed note appeared, the records contained only a copy of the unindorsed note attached to the complaint and a copy of letters from PNC Mortgage stating that the loan was owned by a securitized trust. With the limited available information, it is possible that the unindorsed note came to PNC with the merger documentation. However, it is also possible that the securitized trust was the holder of (or otherwise in possession of) the unindorsed note at the time the complaint was filed. Although we do not believe that the QWR response letter, which states that the securitized trust "owned" the loan, wholly negates PNC Mortgage's claim of timely possession, it does raise genuine issues of material fact regarding what rights and responsibilities were retained by PNC Mortgage or its predecessor in interest during the sale or transfer of the loan and whether the timing of any sale or transfer interfered with PNC Mortgage's interest.

{35} We note that the existence of a securitized trust does not automatically prohibit a party other than the trust from having a right to enforce a note. It is important to differentiate between the owner of a securitized loan, which is the investor having the right to the economic benefits of the note such as the proceeds from foreclosure, and the entity with the right to enforce the note against the borrower. *See supra*, n.3. PNC Mortgage may have been able to establish a right to enforce the unindorsed note had it shown documentation confirming what entity had possession of it through negotiation or transfer at the time of filing the complaint.

CONCLUSION

{36} PNC Mortgage failed to prove standing as to the indorsed note. Genuine issues of material fact exist regarding PNC Mortgage's right to enforce the unindorsed note at the time it filed the complaint. For the reasons set forth in this Opinion, we reverse the district court's order granting summary judgment and remand the case for further proceedings.

{37} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:
MICHAEL E. VIGIL, Chief Judge
RODERICK T. KENNEDY, Judge

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-065

No. 34,110 (filed May 11, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CHAD DEIGNAN,
Defendant-Appellant.

INTERLOCUTORY APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
BRIANA H. ZAMORA, District Judge

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Opinion

J. Miles Hanisee, Judge

{1} A grand jury heard testimony from a Bernalillo County Sheriff's Office detective that Defendant had touched seven-year-old A.G.'s genital area over her clothing, grabbed A.G. by the hips to prevent her from leaving, and asked A.G. to touch his penis.[1] The prosecutor submitted to the grand jury a proposed indictment charging Defendant with (1) second-degree criminal sexual contact of a minor (CSCM) in violation of NMSA 1978, Section 30-9-13(A) (2004); (2) third-degree CSCM in violation of Section 30-9-13(C); (3) attempted second-degree CSCM (child under thirteen) in violation of NMSA 1978, Section 30-28-1 (1963) and Section 30-9-13(A); (4) kidnapping in violation of NMSA 1978, Section 30-4-1 (2004); (5) intentional child abuse or in the alternative negligent child abuse, in violation of NMSA 1978, Section 30-6-1(D) (2009); (6) tampering with evidence, in violation of NMSA 1978, Section 30-22-5 (2003); and (7) bribery of a witness, in violation of NMSA 1978, Section 30-24-3(A)(3) (1997).

{2} Before the grand jury began to deliberate on the indictment, the prosecuting attorney asked the detective witness a series of leading questions that summarized relevant aspects of the detective's testimony and tied this testimony to the charges in the indictment. For example, the prosecuting attorney asked the detective, "So the [c]harges for the [s]exual [c]ontact, for touching [A.G.] over the clothes and also touching her inner thigh on the skin, is the [c]riminal [s]exual [c]ontact that they talked about? That she talked about?" To which the detective responded, "That [A.G.] talked about[,] yes." Similarly, with respect to the attempted second-degree CSCM charge, the prosecutor asked the detective if "the attempted Criminal Sexual Contact, would be that [Defendant] asked [A.G.] to touch his penis?" The detective answered, "Correct."

{3} The prosecutor asked additional leading questions that followed the same template—tying an alleged fact from the detective's testimony to an element of an offense charged in a proposed indictment—for the remaining charges. At the conclusion of these leading questions, a juror asked the detective to describe the physical layout of the alleged crime scene, apparently wondering why there had been no other eyewitnesses to the encounter. After the detective's testimony, the grand jury returned true bills on all counts of the proposed indictment.

{4} Defendant filed a motion to dismiss, arguing that the prosecuting attorney's leading questions led the grand jury to indict him based on insufficient evidence and that the prosecutor had failed to properly instruct the grand jury with the elements of the crimes charged in the indictment. Citing NMSA 1978, Section 31-6-11(A) (2003), which provides that "[t]he sufficiency of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury[,]" the district court rejected this argument and denied the motion.[2] The district court wrote that it "would have preferred that the prosecutor not use leading questions to elicit testimony from its sole witness . . . [but] Defendant failed to meet [his] burden in showing the prosecutor acted in bad faith."

{5} Defendant filed a motion to reconsider, arguing that the district court's decision was erroneous in light of our Supreme Court's recent decision in *Herrera v. Sanchez*, which held that a prosecutor may not "present[] the equivalent of a closing argument regarding how the grand jurors should interpret the instructions as they relate to [the target of its investigation]." 2014-NMSC-018, ¶ 30, 328 P.3d 1176. The district court denied Defendant's motion to reconsider, reasoning that the prosecutor's leading questions "summarized what was already testified to by [the d]etective[.]" The district court certified its ruling for interlocutory review under NMSA 1978, Section 39-3-3(A)(3) (1972). We granted Defendant's request for leave to file an interlocutory appeal and now affirm in part, reverse in part, and remand for further proceedings.

{6} As noted by the district court in its denial of Defendant's motion to dismiss, Section 31-6-11(A) prohibits district court review of the sufficiency of the evidence in support of an indictment "absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury." Defendant contends that the district

[1]This testimony was based on accounts given to police by A.G. and her friend who witnessed the alleged assault.

[2]The district court dismissed the tampering with evidence count without prejudice, agreeing with Defendant that the prosecutor had failed to properly instruct the grand jury with the elements of that crime. The State does not appeal that ruling.

court erred in finding that the prosecutor's leading questions did not amount to bad faith because no reasonable prosecutor would have asked leading questions that suggested the existence of probable cause when the evidence did not support such a finding. But a fair reading of Section 31-6-11(A) is that not every indictment based on insufficient evidence is the result of prosecutorial bad faith; the purpose of the statute is to restrict sufficiency of the evidence review (and the delay that such a review entails) to circumstances where an indictment results from intentional misconduct on the part of the prosecutor, not simply negligence or even recklessness. *See State v. Romero*, 2006-NMCA-105, ¶¶ 7, 8, 140 N.M. 281, 142 P.3d 362 (discussing the "bad faith" element in Section 31-6-11(A) as a "statutory condition precedent to judicial review" of the sufficiency of the evidence supporting an indictment). We think the best way to give effect to this purpose is by giving the phrase "bad faith" its ordinary meaning: "[d]ishonesty of belief, purpose, or motive[.]" Black's Law Dictionary 166 (10th ed. 2014). Reading the phrase "bad faith" in Section 31-6-11(A) to imply an objective assessment of a prosecutor's conduct would render the statute's distinction between indictments based on insufficient evidence and prosecutorial bad faith superfluous because no reasonable prosecutor would seek an indictment based on insufficient evidence. *See State ex rel. Children, Youth & Families Dep't v. Christina L.*, 2015-NMCA-115, ¶ 15, 362 P.3d 155 ("[W]e consider the language of the statute as a whole and construe it so that no word and no part of the statute is rendered surplusage or superfluous." (internal quotation marks and citation omitted)).

{7} Defendant argues that even if the indictment is not subject to judicial review for sufficiency under Section 31-6-11(A), his motion to dismiss is also cognizable as a "structural challenge[] involving the manner in which the grand jury process has been conducted[,]" over which our Supreme Court has permitted judicial review without a showing of prosecutorial bad faith. *Herrera*, 2014-NMSC-018, ¶ 12. Defendant argues that this case is analogous to *State v. Sanchez*, 1980-NMCA-137, ¶ 9, 95 N.M. 27, 618 P.2d 371, *overruled on other grounds by Buzbee v. Donnelly*, 1981-NMSC-097, ¶ 46, 96 N.M. 692, 634 P.2d 1244, where this Court disapproved of the prosecuting attorney's presentation of witness testimony at the grand jury proceeding through leading questions.

{8} To the extent that the leading question issue addressed in *Sanchez* was not dicta, the factual circumstances in the present case are distinguishable. 1980-NMCA-137, ¶¶ 8-9. In *Sanchez*, all witnesses who testified before the grand jury had their testimony presented through leading questions—the grand jury's determination of probable cause was based entirely on the witnesses' "yes" or "no" answers to those questions. *Id.* ¶ 9. Here, the district court found that the detective "testified in response to open ended questions about what happened on the date in question. [The d]etective provided a lengthy narrative of the alleged incident. The majority of the leading questions summarized what was already testified to by [the d]etective." This finding is supported by substantial evidence, and we do not think the use of leading questions in this manner, especially in light of Section 31-6-11(A)'s express provision exempting grand jury proceedings from the rules of evidence, is the kind of structural error that "strikes at the very heart of the grand jury's assessment of probable cause to indict." *Jones v. Murdoch*, 2009-NMSC-002, ¶ 2, 145 N.M. 473, 200 P.3d 523.

{9} Defendant's third argument is that the prosecutor's leading questions "compromis[ed] the grand jury's independent . . . determination of probable cause[,]" and therefore amounted to "structural error" that requires dismissal of the indictment without a showing of prejudice under *Herrera*. *See Herrera*, 2014-NMSC-018, ¶ 30. In *Herrera*, the prosecuting attorney ordered the target not to answer a "direct, relevant question from a grand juror," *id.* ¶ 24, and also told the grand jury that the target's testimony should not be considered because it was an impermissible attempt to make the grand jury consider the consequences of its decision to indict, which is prohibited under the grand jury instructions. *Id.* ¶ 30. Our Supreme Court held that the prosecutor's conduct violated the prosecutor's duty of fairness and impartiality under NMSA 1978, Section 31-6-7(D) (2003) and "interfered with the grand jury's statutory duty to make an independent inquiry into the evidence supporting a determination of probable cause." *Herrera*, ¶¶ 24, 28, 30.

{10} Here, the prosecuting attorney did not compromise the grand jury's independent evaluation of the testimony and application of the instructions it had been given. Instead, the prosecuting attorney simply restated certain aspects of the detective's testimony and suggested that this testimony established elements of the offenses charged in the indictment. We think this conduct falls within the scope of the prosecuting attorney's duty to "attend the grand jury, examine witnesses and prepare indictments, reports and other undertakings of the grand jury." Section 31-6-7(A). To hold otherwise would give rise to absurd results. Under Defendant's view of *Herrera*, simply drafting an indictment and handing it to the foreman would compromise the grand jury's independence because such could be argued to suggest that the grand jury should charge the crimes listed in the indictment. We decline to read *Herrera* so expansively.

{11} Instead, we understand *Herrera* to require an assessment of the prosecutor's actions, viewed under the totality of the circumstances, in order to determine whether they prevented the jury from "mak[ing] an independent inquiry into the evidence supporting a determination of probable cause." 2014-NMSC-018, ¶ 24. In this case, the district court was correct in its assessment that the prosecuting attorney's leading questions did not work such a compromise on the grand jury's independent judgment because the questions simply summarized the detective's lengthy narrative testimony. It is telling that after the prosecutor's leading questions, a member of the grand jury probed the detective's testimony, asking that he explain the layout of the crime scene to better understand why there were no other witnesses to the alleged crime. Viewed in context, we do not think the prosecutor's leading questions compromised the grand jury's ability to make an independent assessment of probable cause.

{12} Defendant finally argues that the prosecutor failed to properly instruct the grand jury with the counts charging defendant with CSCM in the third degree, attempted CSCM in the second degree, and bribery of a witness.[3] *See State v. Ulibarri*, 1999-NMCA-142, ¶ 9, 128 N.M. 546, 994 P.2d 1164, *aff'd*, 2000-NMSC-007, 128 N.M. 686, 997 P.2d 818. In *Ulibarri*,

[3]Defendant concedes that the prosecutor correctly read the elements of the counts of the indictment charging Defendant with second-degree CSCM, kidnapping, and intentional or in the alternative negligent child abuse.

we held that the prosecuting attorney must "specifically direct[] the grand jurors, on the record, to the portions of the grand jury manual where the appropriate elements of the offense or offenses under consideration may be found." *Id.* ¶ 20. We explained that this procedure was necessary in order to enable the grand jury to find "where it can read the elements of each crime charged and how to get additional help if needed" and allow defendants "to verify that the jury was at least referred to the correct set of elements before it was asked to deliberate." *Id.*

{13} The State argues that the prosecutor complied with his obligation under *Ulibarri* by referring the grand jury to the pages of the grand jury manual containing instructions for the crimes charged in the indictment. If this was all the prosecutor had done, Defendant would have no argument to make. *Id.* But the prosecutor went beyond his obligation under *Ulibarri* and incorrectly read the elements of three crimes set out in the indictment prepared for the grand jury. For the third-degree CSCM count, the prosecutor referred the grand jury to the page in the manual describing the elements of that charge, but incorrectly told the grand jury that it had the same elements as the second-degree CSCM charge. *See* UJI 14-925 NMRA (uniform jury instruction setting out the elements of second- and third-degree CSCM). As to the attempted second-degree CSCM count, the prosecutor did not tell the grand jury what underlying felony Defendant was being charged with attempting. *See* UJI 14-2801 NMRA Use Note (requiring a separate instruction for each predicate felony charged in the attempt count). Finally, regarding the bribery of a witness count, the prosecuting attorney failed to instruct the grand jury as to the felony that the witness knew about when Defendant intimidated her. *See* UJI 14-2403 NMRA (requiring a reference to the felony that the witness had knowledge concerning in a bribery of a witness instruction). We agree with Defendant that the prosecutor's erroneous instructions to the grand jury on these counts constitute structural error and require their dismissal without prejudice.

{14} The district court's denial of Defendant's motion to dismiss the counts in the indictment charging Defendant with second-degree CSCM, kidnapping, and intentional or in the alternative negligent child abuse is affirmed. We reverse its denial of the motion to dismiss the counts charging Defendant with attempted second-degree CSCM, third-degree CSCM, and bribery of a witness. The case is remanded to the district court with instructions to dismiss those three counts without prejudice.

{15} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:
JAMES J. WECHSLER, Judge
TIMOTHY L. GARCIA, Judge

Certiorari Denied, June 29, 2016, No. S-1-SC-35927

From the New Mexico Court of Appeals

Opinion Number: 2016-NMCA-066

No. 33,861 (filed May 13, 2016)

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MICHAEL A. ESTRADA,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
DOUGLAS R. DRIGGERS, District Judge

HECTOR H. BALDERAS
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Albuquerque, New Mexico
for Appellee

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Chief Public Defender
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Assistant Appellate Defender
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for Appellant

Opinion

J. Miles Hanisee, Judge

{1} Defendant appeals his conviction for conspiracy to commit forgery, arguing that there was insufficient evidence to support the jury's verdict and that the district court erred in denying his motion to dismiss the indictment on speedy trial grounds. We affirm.

I. BACKGROUND

{2} We divide our narrative of the facts into two parts: (A) facts relevant to Defendant's motion to dismiss on speedy trial grounds, and (B) facts relevant to Defendant's challenge to the sufficiency of the evidence in support of his conviction for conspiracy to commit forgery. We adopt the district court's findings of fact with respect to its denial of Defendant's speedy trial motion to the extent its findings are supported by substantial evidence. *State v. Spearman*, 2012-NMSC-023, ¶ 19, 283 P.3d 272. Similarly, we recite the facts relevant to Defendant's sufficiency of the evidence challenge to his conviction in the light most favorable to the jury's guilty verdict. *See State v. Chavez*, 2009-NMSC-035, ¶ 11, 146 N.M. 434, 211 P.3d 891.

A. Facts Relevant to Defendant's Motion to Dismiss on Speedy Trial Grounds

{3} On November 12, 2010, the State filed a criminal complaint in magistrate court charging Defendant with four counts of forgery in violation of NMSA 1978, Section 30-16-10(A), (B) (2006). Defendant was arrested on November 19, 2010. On December 9, 2010, Defendant was charged in district court by grand jury indictment of four counts of forgery and one count of conspiracy to commit forgery. The State dismissed the magistrate court case without prejudice the following day.

{4} Defendant was arraigned on the district court criminal complaint on December 27, 2010. The district court set Defendant's bond at $15,000. On January 21, 2011, Aric Elsenheimer, Defendant's public defender, filed an entry of appearance and request for discovery, as well as a demand for speedy trial. On February 21, 2011, Mr. Elsenheimer filed a written motion for a reduction of Defendant's bond.

{5} On February 25, 2011, the State moved to join Defendant's case with pending cases against his two alleged co-conspirators. The district court entered notices scheduling a hearing on the State's joinder motion and Defendant's motion to reduce bond for April 7, 2011. On April 4, 2011, for reasons unexplained in the record, the district court vacated the motion hearing.

{6} On May 2, 2011, Pedro Pineda filed an entry of appearance on Defendant's behalf. (Mr. Elsenheimer did not file a motion to withdraw or substitute, but it appears that this was the effect of Mr. Pineda's entry of appearance because Mr. Elsenheimer did not participate in the case from this point onward.) On July 25, 2011, Defendant posted bond and was released from incarceration. On August 22, 2011, the district court entered a notice scheduling a jury trial for Defendant's charges on October 4, 2011. On September 29, 2011, the State filed a motion to continue the October 4, 2011, trial referencing its pending motion to join Defendant's case with one of his alleged co-conspirator's. The motion stated that "Defense counsel, [Mr.] Pineda, does not oppose this [m]otion." On September 30, 2011, the district court granted the State's motion to continue and vacated the October 4, 2011, trial setting.

{7} On February 2, 2012, the State filed a request for a hearing on its motion to join. A hearing on the motion was scheduled to take place on February 15, 2012, and on February 16, 2012, the State filed an amended motion to join that sought to join Defendant's case with the case against only one of Defendant's alleged co-conspirators, Richard M. Tow.[1] Defendant's attorney did not oppose the motion. On February 17, 2012, the district court entered an order joining Defendant's case with Mr. Tow's. On March 13, 2012, the district court entered a notice setting a jury trial for April 26, 2012.

{8} On April 11, 2012, Defendant filed a pro se motion to dismiss counsel. In the motion, Defendant asserted that his attorney, Mr. Pineda, had failed to communicate with him and that his right to a speedy trial had been violated. Defendant noted "[m]y trial is [set for] the 26th of April, and I need an [a]ttorney to prepare for my trial because I am innocent and I am taking this case to trial." Defendant's motion was mailed to the district court in an envelope that listed the Luna County

[1]Although this information is not part of the record, Defendant represents in his brief in chief that the reason the State no longer sought to join his case with the other alleged co-conspirator's case was because that co-conspirator had pleaded guilty to the charges against her.

Detention Center as a return address. On April 13, 2012, the district court scheduled a hearing on Defendant's pro se motion to take place on April 19, 2012.

{9} On April 18, 2012, Defendant's attorney filed a motion to withdraw. In it, Mr. Pineda asserted that Defendant's pro se motion to dismiss him as his attorney had caused "the attorney client relationship [to] deteriorate[] beyond repair[.]" Mr. Pineda argued that Defendant's assertion that he had never met or communicated with his attorney was refuted by the fact that the arguments in his motion to dismiss counsel were based on information that could only be gleaned from discovery that the State had provided to Mr. Pineda, which Mr. Pineda had in turn provided to Defendant. Mr. Pineda asserted that Defendant had been arrested for a probation violation on September 8, 2011, and again released on October 13, 2011, but had failed to comply with a condition of release requiring him to stay in contact with his attorney. Mr. Pineda also stated that Defendant was arrested for another probation violation on February 14, 2012, and that "he has been incarcerated ever since." Mr. Pineda explained that Defendant's dissatisfaction with Mr. Pineda likely stemmed from his being "very unhappy" with the State's plea offer, which Mr. Pineda had conveyed to Defendant. Finally, Mr. Pineda stated that "Defendant . . . [has] consulted with local attorney Mike Lilley, [and] Mr. Lilley told [Defendant] he would sue me and he would take over [Defendant's] criminal case as well."

{10} On April 19, 2012, Defendant, again pro se, filed a motion for setting and telephonic hearing, in which he asserted that the indictment against him should be dismissed for "due process" and speedy trial violations. The district court held a hearing on April 20, 2012. At the beginning of the hearing, Defendant explained that he had filed a separate motion for a telephonic hearing because he lived in Deming, New Mexico. Defendant also admitted that he had in fact met with Mr. Pineda once.

{11} Defendant disputed that he had hired another attorney to replace and sue Mr. Pineda, explaining that Mr. Pineda's assertion in his motion to withdraw must have been the result of a "misunderstanding." In response, Mr. Pineda called his assistant to give testimony as a witness. Mr. Pineda's assistant testified that she had only spoken to Defendant once, when Defendant had called from jail to say that he planned to hire Mr. Lilley to sue Mr. Pineda for unstated reasons and to represent Defendant in his criminal case.

{12} The prosecutor explained that the State's primary concern was how the delay that would result from granting Defendant's motion to dismiss his attorney would be assigned for speedy trial purposes. Notwithstanding these concerns, the district court granted Defendant's motion to dismiss counsel and Mr. Pineda's motion to withdraw. The district court stated that "it appears to this court that the parties will not be prepared for trial" and directed Mr. Pineda to prepare form orders granting each motion and continuing the trial. The district court asked Defendant personally whether he approved the "form" of the orders, and Defendant orally did so.

{13} On May 11, 2012, the district court entered orders granting Defendant's oral motion to continue, his motion to dismiss counsel, and Mr. Pineda's motion to withdraw as counsel. The district court reset Defendant's jury trial for July 31, 2012. On June 11, 2012, Defendant's replacement contract defender, Peter Giovannini, filed a notice of appearance, demand for discovery, and a speedy trial demand.

{14} On July 23, 2012, Defendant's attorney filed a motion to vacate the July 31, 2012, jury trial. The motion cited Defendant's confusion as to who in fact was representing him, Defendant's request to take statements by several witnesses for the State and witnesses that Defendant intended to call to testify in his defense at trial. The motion stated that "[u]ndersigned counsel agrees that any delay arising from this continuance should be attributed to the defense for purposes of any speedy trial analysis." The district court granted Defendant's motion to continue and vacated the July 31, 2012 trial setting, which was reset for October 11, 2012.

{15} On September 25, 2012, Defendant's attorney filed a motion to vacate the October 11, 2012, trial setting, stating that Defendant had been released from prison to serve the remainder of his sentence at a halfway house, and that "Defendant . . . is unable to communicate with undersigned counsel regarding [this case] because [he] is fearful that the [halfway house] will give him an 'unsuccessful release' from the program[,] which will violate his probation." The motion explained that "if the [halfway house] is aware of pending charges, he will be released from the program." The motion stated that "[u]ndersigned counsel and Defendant respectfully request that this matter be vacated and rescheduled after April[] 2014 to allow [D]efendant . . . to successfully complete the [halfway house s]ubstance [a]buse [t]reatment [p]rogram[.]" The State opposed the motion.

{16} On October 3, 2012, the district court held a hearing on Defendant's motion to continue. Defendant was not in attendance but his attorney reiterated that Defendant wanted to stay the proceedings until after April 2014 in order to allow him an opportunity to successfully complete the terms of his probation in an unrelated case. The State explained its opposition to the motion, arguing that granting Defendant's motion to continue would raise speedy trial problems and cause "hardship" to the parties. Finally, the State called a probation officer as a witness, who testified that Defendant had left the halfway house because of a "medical injury." The witness also testified that he had seen text messages Defendant had sent to in September to the mother of Defendant's son stating that he was "on the run."

{17} The district court recessed the hearing in order for the attorneys for the State and Defendant to attempt to locate Defendant. After the recess, both the State's attorney and Defendant's attorney said they were unable to locate Defendant, and that he was not at the Luna County Detention Center. The district court did not rule on Defendant's motion to continue and issued a bench warrant for Defendant's arrest.

{18} On October 9, 2012, Defendant's attorney filed another motion to continue. The motion stated that on the same day as the hearing on Defendant's earlier motion to continue, "Defendant . . . contacted [Mr. Giovannini's] office stating he was release[d] from the [halfway house] to have surgery but he would return to the program[.]" The motion also stated that "[u]ndersigned counsel agrees that any delay arising from this continuance should be attributed to the defense for purposes of any speedy trial analysis." The State did not oppose Defendant's renewed motion to continue. The district court granted the motion.

{19} On October 29, 2012, the State filed a request for a jury trial setting, and a few days later the district court entered a notice setting trial for December 17, 2012. On November 9, 2012, the court held a hearing in which it heard from Defendant's attorney that Defendant had in fact been in custody in another jurisdiction, so the bench warrant for failing to appear had been issued in error. On December 13, 2012, the State moved to

review Defendant's conditions of release. The State acknowledged that Defendant was in custody in Deming on October 3, 2012, when the court held its hearing on Defendant's earlier motion to continue. But the State contended that Defendant's conditions of release should be reviewed because "Defense counsel . . . has informed the State that . . . Defendant has failed to maintain contact with defense counsel, and there are no assurances that . . . Defendant will appear for trial on the scheduled trial date." The district court did not hold a hearing or otherwise dispose of the State's motion to review Defendant's conditions of release. Instead, it appears to have simply continued the December 2012 trial setting to April 10, 2013.

{20} On April 9, 2013, the day before trial, Defendant submitted a pro se motion to investigate and a motion to dismiss. In the motion to dismiss, Defendant made two arguments: (1) his arrest was unlawful, and (2) his right to a speedy trial had been violated. With respect to his speedy trial claim, Defendant argued that his case was simple and that the nearly two-and-one-half-year delay between his arrest and trial violated his right to a speedy trial.

{21} The court heard argument on Defendant's motion to dismiss on the morning of trial on April 10, 2013. The district court denied Defendant's motion to dismiss based on an unlawful arrest, and Defendant has not appealed that ruling. With respect to the claim that his right to a speedy trial had been violated, Defendant argued that his case was simple and that the length of the delay resulted in a violation of his right to a speedy trial. Defendant's attorney indicated that Defendant's motion likely did not have any merit because he had "absconded" for a significant period of time between his arrest and the trial and, therefore, was himself responsible for much of the delay. Defendant conceded that he had absconded, saying "[y]eah, my mom was really sick."

{22} After the State's attorney responded, Defendant's attorney asked to be allowed to correct statements he had made earlier. Defendant's attorney stated:

> [Defendant] felt compelled to leave [the halfway house] because he had to have a surgery. Actually, they asked him to leave because of a medical problem that he had told them about and told them that he needed to get treatment on. So that changes the whole complexion of things.

The State responded that the halfway house Defendant was living in was a long-term inpatient program, which requires its patients to stay for a year to eighteen months. The State argued that Defendant "can't . . . really [have] been planning on going to trial in this case if he . . . [was in] an inpatient program for that length of time. And, again, if he left that program and ended up with a warrant, that still counts against [D]efendant and counts against his vigorous assertion of his right to a speedy trial[.]"

{23} The district court orally recited the history of the case and made certain findings of fact that we review in greater detail in our discussion of Defendant's speedy trial argument later in this Opinion. The court found that "most of the delay has been charged to [D]efendant; therefore, [the court] denies your motion to dismiss [on speedy trial grounds]." After trial, the district court entered a written order denying Defendant's motion to dismiss that again assigned most of the delay to Defendant and additionally found that "Defendant has not vigorously asserted the right to a speedy trial and there is no prejudice to . . . Defendant[.]"

B. Facts Relevant to Defendant's Sufficiency of the Evidence Argument

{24} Immediately after denying Defendant's motion to dismiss, the court convened a jury venire, selected a jury, and proceeded to trial.

{25} Clorinda Barela testified that her daughter was living with Defendant in 2010. Defendant and her daughter had a son, and in September 2010, Ms. Barela had written a check for $10 to her grandson in order to purchase candy he was selling for a school fundraiser. Ms. Barela saw that the check she had written was instead cashed for $200 at a Walmart. Ms. Barela obtained copies of receipts for the merchandise that had been purchased with the check and reported the issue to the police. Ms. Barela learned that her daughter had been identified as one of the individuals who had used the check at the Walmart.

{26} Juliet Barela testified that her mother had given her son a check for a fundraiser and that Defendant had erased the amount for which the check was originally made and replaced it with $200 or $250. Juliet Barela said that Defendant had given her the check, she went into Walmart and purchased items with the check, and then returned the items for cash. Juliet Barela testified that she kept $30 of the proceeds, while Defendant kept the rest.

{27} The State presented the testimony of Jack Waggoner. Mr. Waggoner testified that in October 2010, a check he had written to his telephone company was stolen from the mailbox in front of his house. On October 28, 2010, Mr. Waggoner's wife received a call from a check cashing business asking her whether her husband had hired anyone to perform work around the house for $250. When he went to the check cashing business to investigate, Mr. Waggoner was given a check he recognized to be the check he had written to Qwest, but it was made out to a man named Richard Tow. That check was admitted into evidence.

{28} The State also presented the testimony of Velia Hernandez, the clerk at the check cashing business Mr. Waggoner had referenced in his direct testimony. Ms. Hernandez testified that on October 28, 2010, a man had attempted to cash a check that she felt did not look "like . . . a legit check." Ms. Hernandez called 411 to look up the phone number of Mr. Waggoner, who was identified on the check as the check's owner. When she called Mr. Waggoner, his wife answered, and told her not to cash the check. Ms. Hernandez then called the police, and the man who had come to cash the check fled.

{29} The State called Mr. Tow to testify. Mr. Tow testified that Defendant had given him a check for some yard work he had performed for Defendant's relatives. Mr. Tow testified that he had initially tried to cash the check at a Wells Fargo, but decided to leave because the line for the teller was too long. Mr. Tow testified that he went to a nearby check cashing business to try and cash the check. He testified that the cashier appeared to have "a problem with the check. . . . I asked her if there was a problem, and she nodded to me that there was. So I left, went back and got in the vehicle and left. And [Defendant] was very upset with me. I remember he yelled at me, told me, well, why the hell did I leave the check there[?]"

{30} Mr. Tow testified that Defendant was an acquaintance. Mr. Tow said that he had let Defendant borrow his truck, on the condition that Defendant purchase some new tires for the truck. Mr. Tow testified that Defendant had new tires put on the truck at Walmart and gave him a receipt for the $821.78 purchase. Although Mr. Tow recognized the description of his vehicle on the Walmart work order, he did not recognize the name of the person who had

ordered the work, identified as "Marcos Silva."

{31} Finally, the State presented the testimony of Las Cruces Police Detective Frank Torres. Detective Torres testified that he was contacted by a man named Orton Keats, who had told police that a check he had written to pay a bill had been converted to a higher amount. Detective Torres was able to verify that Mr. Keats's check had been used to purchase a set of four tires at WalMart for $821.78. Detective Torres also obtained the work order from Walmart, which provided a license plate for the vehicle that the tires were installed on: Mr. Tow's truck.

{32} Detective Torres also testified that he investigated a police report made by Marcey Carter. Detective Torres testified that Ms. Carter had written a check to pay a bill and put it into her mailbox for mailing. Ms. Carter discovered that the check had cleared, but for a different amount, and had been used at Walmart. Detective Torres obtained surveillance footage from Walmart showing a man wearing white cowboy boots and a Dallas Cowboys sweatshirt making a purchase with Ms. Carter's check. Detective Torres testified that Mr. Tow had identified Defendant as the man in the surveillance video because Defendant always wears white cowboy boots.

{33} At the close of the State's case, Defendant moved for a directed verdict on all of the charges against him, which the district court denied. The jury acquitted Defendant of the four forgery charges but returned a guilty verdict on the conspiracy to commit forgery charge.

II. DISCUSSION

{34} Defendant raises two arguments on appeal: (A) there was insufficient evidence to support the jury's guilty verdict on the indictment's conspiracy to commit forgery charge, and (B) the district court erred in denying his motion to dismiss the indictment on speedy trial grounds. We address each argument in turn.

A. There Was Sufficient Evidence for a Rational Jury to Conclude That Defendant Had Conspired to Commit Forgery

{35} Defendant's first issue on appeal challenges the sufficiency of the evidence supporting the jury's guilty verdict on the conspiracy to commit forgery charge. When a defendant challenges the sufficiency of the evidence supporting a criminal conviction, we review the record to determine whether

> sufficient evidence was adduced to support the underlying charge. The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to a conviction. When considering the sufficiency of the evidence, [an appellate court] does not evaluate the evidence to determine whether some hypothesis could be designed which is consistent with a finding of innocence. Instead, [the reviewing courts] view the evidence as a whole and indulge all reasonable inferences in favor of the jury's verdict while at the same time asking whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt[.]

State v. Sena, 2008-NMSC-053, ¶ 10, 144 N.M. 821, 192 P.3d 1198 (internal quotation marks and citations omitted).

{36} Conspiracy consists of "knowingly combining with another for the purpose of committing a felony within or without [New Mexico]." NMSA 1978, § 30-28-2(A) (1979). The jury was given an instruction modeled after UJI 14-2810 NMRA, the pattern jury instruction for conspiracy. That instruction read as follows:

> For you to find [D]efendant guilty of conspiracy to commit forgery . . ., the [S]tate must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
>
> 1. [D]efendant and another person by words or acts agreed together to commit forgery;
> 2. [D]efendant and the other person intended to commit forgery;
> 3. This happened in New Mexico on or between July 1, 2010 and November 1, 2010.

{37} The jury was also given four instructions corresponding to each forgery charge. The instructions stated:

> For you to find [D]efendant guilty of forgery as charged in Count[s 1, 2, 3, or 4,] the [S]tate must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
>
> 1. [D]efendant changed a genuine check so that its effect was different from the original;
> 2. At the time, [D]efendant intended to injure, deceive[,] or cheat [Clarinda Barela, Jack Waggoner, Orton Keats, Marcey Carter,] or another;
> 3. This happened in New Mexico on or between July 1, 2010 and November 1, 2010.

Thus, in order for the jury to find Defendant guilty of conspiracy to commit forgery, it needed to conclude beyond a reasonable doubt that between July 1 and November 1, 2010, Defendant had by words or acts agreed to change a genuine check so that its effect was different from the original, with intent to injure Clarinda Barela, Jack Waggoner, Orton Keats, Marcey Carter, or another.

{38} Defendant concedes that the State established beyond a reasonable doubt that "four personal checks belonging to four different people were washed and passed at four different times[,]" but argues that the "single Walmart image of him leaving the store . . . [at the] time of the passing of one check in question and the self-serving statements of two co-defendants" was insufficient to establish that Defendant washed and passed the checks. But the jury need not have been convinced that Defendant was the one who washed or passed checks; it only needed to conclude that Defendant had entered into an agreement with another (presumably either Mr. Tow or Juliet Barela) to wash and pass the checks. *See*, *e.g.*, *State v. Olguin*, 1994-NMCA-050, ¶ 36, 118 N.M. 91, 879 P.2d 92 ("[W]e . . . uphold the conviction for conspiracy, notwithstanding that one of the underlying crimes may not have been supported by sufficient evidence."), *aff'd in part, set aside in part by* 1995-NMSC-077, 120 N.M. 740, 906 P.2d 731.

{39} Defendant next takes issue with the sufficiency of the State's proof of an agreement. We note that conspiracies may be (and often are) proven with circumstantial evidence. *See State v. Sheets*, 1981-NMCA-064, ¶ 13, 96 N.M. 75, 628 P.2d 320. Defendant appears to acknowledge that the circumstantial evidence alone is enough to resolve this argument against him because Mr. Tow and Juliet Barela both offered testimony from which a jury could infer the existence of a conspiracy: Mr. Tow's testimony that Defendant had agreed to obtain a new set of tires for Mr. Tow's truck in exchange for letting Defendant borrow it; and Juliet Barela's testimony that she and Defendant had agreed to wash and use her mother's check

at Walmart, sharing the proceeds. By characterizing the testimony of Mr. Tow and Juliet Barela as "self-serving," Defendant is in essence conceding that his sufficiency of the evidence challenge to his conviction for conspiracy turns on a challenge to the jury's decision to credit the testimony of Mr. Tow and Juliet Barela, a decision which we are powerless to review on appeal. *See State v. Nichols*, 2006-NMCA-017, ¶ 9, 139 N.M. 72, 128 P.3d 500; *see also State v. Hernandez*, 1993-NMSC-007, ¶ 69, 115 N.M. 6, 846 P.2d 312 (recognizing that the appellate courts' . . . "duty on appeal is neither to substitute our judgment for that of the jury nor reweigh the evidence"). The fact that the jury acquitted Defendant of the offenses that formed the object of the charged conspiracy is not controlling or determinative. *See State v. Armijo*, 1931-NMSC-008, ¶ 7, 35 N.M. 533, 2 P.2d 1075 ("It is quite possible for [the defendants] to have conspired to commit [larceny], without having committed, the larceny."); *see also State v. Gilbert*, 1982-NMCA-081, ¶ 20, 98 N.M. 77, 644 P.2d 1066 (recognizing that "the crime of conspiracy is complete when the felonious agreement is reached").

{40} For the foregoing reasons, we reject Defendant's sufficiency of the evidence challenge to his conviction for conspiracy to commit forgery.

B. The District Court Did Not Err in Denying Defendant's Motion to Dismiss on Speedy Trial Grounds

{41} The Speedy Trial Clause of the Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial[.]" U.S. Const. amend. VI. "The heart of the right to a speedy trial is preventing prejudice to the accused." *State v. Garza*, 2009-NMSC-038, ¶ 12, 146 N.M. 499, 212 P.3d 387. The right to a speedy trial "is unique among the constitutional guarantees afforded a criminal defendant because of the concomitant 'societal interest in bringing an accused to trial.' " *State v. Serros*, 2016-NMSC-008, ¶ 4, 366 P.3d 1121 (quoting *Garza*, 2009-NMSC-038, ¶ 12). "As a result, merely showing delay in bringing an accused's case to trial is not enough to establish a speedy trial violation; rather, [the appellate courts] must scrutinize every claimed violation to determine whether the accused has suffered an actual and articulable deprivation of the right to a speedy trial." *Serros*, 2016-NMSC-008, ¶ 4 (internal quotation marks and citation omitted).

{42} We evaluate Defendant's claim that his Sixth Amendment right to a speedy trial was violated using the four factors set out in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): "(1) the length of the delay in bringing the case to trial, (2) the reasons for the delay, (3) the defendant's assertion of the right to a speedy trial; and (4) the prejudice to the defendant caused by the delay." *Id.*; *see also Serros*, 2016-NMSC-008, ¶ 5.

1. Length of Delay

{43} "The first factor, the length of delay, has a dual function: it acts as a triggering mechanism for considering the four *Barker* factors if the delay crosses the threshold of being presumptively prejudicial, and it is an independent factor to consider in evaluating whether a speedy trial violation has occurred." *Serros*, 2016-NMSC-008,¶ 22. As to the first function, our Supreme Court "[has] established benchmarks for presumptively prejudicial delay according to the complexity of a case: one year for a simple case, 15 months for a case of intermediate complexity, and 18 months for a complex case." *Id.* ¶ 22 (citing *Garza*, 2009-NMSC-038, ¶ 48). In this case, the State concedes (and we agree) that the twenty-nine month, twenty-two day-long delay between Defendant's arrest and his trial is sufficient to trigger further analysis for a speedy trial violation regardless of the complexity of the case.

{44} As to the second, "independent" function that the first *Barker* factor performs, our Supreme Court has stated that "[t]he length of delay is an objective determination that is capable of measurement with some precision, and once established, it colors the rest of the speedy trial analysis. A delay that crosses the threshold for presumptive prejudice necessarily weighs in favor of the accused; the only question is, how heavily?" *Serros*, 2016-NMSC-008, ¶ 26. Importantly, "the parties' fault in causing the delay is irrelevant to the analysis" of this factor. *Id.* "A delay that scarcely crosses the bare minimum needed to trigger judicial examination of the claim is of little help to a defendant claiming a speedy trial violation." *Id.* (internal quotation marks and citation omitted). "Conversely, an extraordinary delay . . . weighs heavily in favor of a defendant's speedy trial claim, bearing in mind that no single factor is dispositive of whether a violation has occurred." *Id.*; *See Garza*, 2009-NMSC-038, ¶ 24.

{45} As an initial matter, we note that our Supreme Court in *Serros* did not explain how to determine the difference between a presumptively prejudicial delay that "scarcely crosses the bare minimum needed" and provides "little help to a defendant" versus the additional length of delay that would be considered "extraordinary" and that "weighs heavily in favor of a defendant's speedy trial claim." *Id.* (internal quotation marks and citation omitted). In *Serros*, our Supreme Court concluded that weighing the first factor heavily in the defendant's favor was not a "difficult question" because the fifty-one month long delay between the defendant's arrest and the dismissal of his indictment for speedy trial violations was far in excess of the amount needed to create a presumption of prejudice. *Id.* ¶ 24.

{46} Here, the nearly twenty-nine month delay between Defendant's arrest and his trial is more than the "bare minimum needed" to show presumptive prejudice, but significantly shorter than the fifty-one month delay that *Serros* concluded weighed heavily in the defendant's favor as a matter of course. *Id.* ¶ 26 (internal quotation marks and citation omitted). Moreover, the district court in this case did not make an express finding as to the complexity of Defendant's case. The complexity of this case does not matter to our determination of presumptive prejudice because the amount of delay is sufficient to trigger a speedy trial analysis regardless of the case's complexity. *See id.* ¶ 23 (concluding the delay presumptively prejudicial without determining the case's complexity). But with respect to how we are to evaluate this length of delay factor, the complexity of this case takes on considerable importance. If the case is classified as simple, then the delay exceeds the threshold for presumptive prejudice by seventeen months; if intermediate, fourteen; if complex, only eleven. *See id.* ¶ 22 (recognizing that the amount of time that must elapse for delay to become presumptively prejudicial is "one year for a simple case, 15 months for a case of intermediate complexity, and 18 months for a complex case" (citing *Garza*, 2009-NMSC-038, ¶ 48)).

{47} The State argues that this is a case of "intermediate" complexity based on "the number of potential witnesses and scenarios that were involved." Specifically, the State asserts that it was required to prepare for a trial involving testimony of the checks' owners, the employees of the businesses where Defendant allegedly passed the checks off, records custodians who could lay the foundation for the admission of surveillance camera footage, and any

law enforcement personnel involved in the investigations that led to Defendant's arrest. We agree that the State's assessment of this case's complexity is reasonable, and accordingly, find that the length of the delay in this case was fourteen months in excess of the amount necessary to trigger judicial scrutiny.

{48} In *Serros*, our Supreme Court concluded that a fifty-one month delay between the defendant's arrest and the dismissal of the indictment against him on speedy trial grounds was "extreme" and therefore justified weighing the first *Barker* factor heavily in the defendant's favor. *Serros*, 2016-NMSC-008, ¶ 24. By contrast, in *Garza*, our Supreme Court determined that a delay that only exceeded the amount required to trigger further judicial analysis by a month and six days "was not extraordinary and [did] not weigh heavily in [the d]efendant's favor." *Garza*, 2009-NMSC-038, ¶ 24. Here, the delay in this case exceeds the amount required to trigger further analysis by fourteen months. This delay is far more than the "bare minimum needed to trigger judicial examination of the claim." *Id.* (internal quotation marks and citation omitted). Accordingly, we conclude that this factor weighs heavily in Defendant's favor.

2. The Reasons Behind the Delay

{49} The district court found that most of the delay in this case was attributable to Defendant. As we have stated above, we give deference to the district court's finding of fact that Defendant caused most of the delay in this case, to the extent it is supported by substantial evidence in the record. *See Serros*, 2016-NMSC-008, ¶ 20.

{50} Defendant argues that the State is responsible for twenty-four out of the twenty-nine months of delay in this case. Defendant asserts that the delay between February 2011 and February 2012 was caused by the State's filing of a motion to join Defendant's case with that of his alleged co-conspirators' and the district court's negligent failure to timely rule on the motion. Defendant argues that the State is responsible for another two months of delay caused by its mistaken belief that Defendant had absconded from custody when he was in fact in prison, thus causing the district court to issue a bench warrant and continue the October 2012 trial setting to December 2012. Finally, Defendant argues that he should not be held responsible for the delays between April 2012 and April 2013, which Defendant argues was caused by motions to continue filed by his trial counsel which he did not consent to filing. We assess and assign responsibility for the delays in this case chronologically.

{51} We agree with Defendant that the delay caused by the State's motion to join (and the district court's failure to rule on the motion) is properly weighed in Defendant's favor. Accordingly, twelve of the twenty-nine month period of delay in this case weighs in Defendant's favor. In doing so, we reject the State's argument that the delay should not be weighed against it because the motion had merit and was ultimately granted as unopposed in modified form. Whatever the merit of the motion, the State's decision to file it occasioned the district court's delay until it ruled on the motion. Accordingly, this period of time is appropriately weighed more heavily against the State. *See Garza*, 2009-NMSC-038, ¶¶ 26-30 (noting that delays caused by administrative burdens on the court system are typically weighed slightly in the defendant's favor, but the more "protracted" the delay, the more heavily it is weighed in the defendant's favor).

{52} We disagree with Defendant's assertion that the period of delay from April 2012 to April 2013 is the fault of the State. Defendant argues that he asserted his right to a speedy trial by filing a pro se motion to dismiss his attorney in which he also demanded to proceed to trial. We are mindful that the right to a speedy trial and the right to effective assistance of counsel are not mutually exclusive. *Serros*, 2016-NMSC-008, ¶ 81. In this regard, when assessing a period of delay caused by a defendant's pro se motion to discharge his attorney, our Supreme Court identified the reasonableness of such a request as the relevant inquiry in determining whether to assign the resultant delay to the defendant or the state. *Id.* ¶¶ 53-54. As we explain below, we think that there is substantial evidence to support the district court's finding that Defendant, not his counsel, is responsible for this period of delay.

{53} In his pro se motion to dismiss his attorney, filed about two weeks before the April 2012 trial setting, Defendant asserted that his attorney was not communicating with him, not preparing his case for trial, and not providing him with discovery. But against these assertions of fact, Defendant's attorney said that he had communicated with Defendant, was preparing the case for trial, and had provided Defendant with discovery from the State. Although Mr. Pineda did not submit an affidavit or otherwise testify to his assertions of fact, neither did Defendant. Moreover, Mr. Pineda called his administrative assistant to testify that Defendant had called and told her that he had obtained another attorney who would be suing Mr. Pineda and taking over Defendant's case. Because Defendant had denied making such an assertion, Mr. Pineda's assistant's testimony undermined Defendant's credibility and provided the district court with a substantial basis for concluding that Defendant's effort to fire his attorney was a "last-minute plea[] to change counsel [that] should be []viewed skeptically[,]" not a reasonable invocation of his right to effective trial counsel. *Id.* ¶ 53. Accordingly, we assign to Defendant the delay caused by the district court's continuance of the April 26, 2012, trial date to July 31, 2012.

{54} Defendant's replacement counsel moved to continue the July 31, 2012, trial date based on the need to conduct additional investigation. Defendant's attorney stated that Defendant had been under the mistaken impression that counsel for his co-Defendant, Mr. Tow, was his attorney, and that this caused several weeks of delay. Once this misunderstanding had been cleared up, Defendant requested that his attorney conduct additional investigation and track down additional witnesses who Defendant wanted to call to testify in his defense. Although these requests are hardly unreasonable, it does not follow that any delay that resulted must be weighed against the State. The district court did not err in concluding that Defendant should be assigned responsibility for the delay caused by continuing the July 31, 2012, trial setting to October 11, 2012.

{55} We disagree as well with Defendant that the State caused the delay between October 2012 and December 2012. This period of delay was not caused by the district court's mistaken issuance of a bench warrant for Defendant's arrest, as defendant argues; rather, it was caused by Defendant's attorney filing a motion at Defendant's behest that trial be continued until after April 2014 in order to allow Defendant to finish an inpatient treatment program at a halfway house. It is worth noting that the State opposed Defendant's motion to continue, arguing that granting the motion would create speedy trial concerns. The State also presented evidence at the hearing on the motion that tended to refute Defendant's claim that he was actually enrolled in an inpatient treatment program. To be sure, confusion over De-

fendant's location might have caused the district court to mistakenly issue a bench warrant and may have figured into the district court's decision to delay the trial. But the occasion for the delay in the first place was Defendant's request to continue the trial for nearly two years, which the State opposed, and Defendant's decision to leave the halfway house to seek medical attention, which contributed to the confusion over Defendant's location. We see no error in the district court's determination that Defendant should be held responsible for this period of delay.

{56} Although the district court did not enter an order or otherwise explain why it was continuing the December 17, 2012, trial setting, it appears that the reason for the continuance was the State's December 13, 2012, motion to revoke Defendant's conditions of release. In that motion, the State stated that it had been told by Defendant's attorney that "Defendant has failed to maintain contact with defense counsel, and there are no assurances that . . . Defendant will appear for trial on the scheduled trial date." Defendant later conceded on the morning of trial that he had failed to stay in contact with his attorney. Although it is not clear whether Defendant failed to stay in contact with his attorney in order to purposefully delay the December 17, 2012, trial, this evidence provided a sufficient basis for the district court to find that Defendant "affirmatively cause[d] or acquiesce[d]" in this period of delay. *Serros*, 2016-NMSC-008, ¶ 74.

{57} In sum, twelve months of the delay in this case can be assigned to the State; Defendant caused or acquiesced in the remaining sixteen months' delay. Since the majority of the delay in this case was caused by Defendant, we conclude that application of the second *Barker* factor "tip[s] the balance back in favor of the societal interest in bringing [the d]efendant to trial" and ultimately weighs in favor of the State. *Serros*, 2016-NMSC-008, ¶ 28 (internal quotation marks and citation omitted).

3. Defendant's Assertion of the Right to a Speedy Trial

{58} The third *Barker* factor looks to "the frequency and force of the objections[,] as opposed to attaching significant weight to a purely pro forma objection." *Barker*, 407 U.S. at 529. The right to a speedy trial is

> fundamental in nature so that a failure to assert [it] does not constitute waiver, but the timeliness and vigor with which the right is asserted may be considered as an indication of whether a defendant was denied needed access to speedy trial over his objection or whether the issue was raised on appeal as [an] afterthought.

Garza, 2009-NMSC-038, ¶ 32.

{59} Here, Defendant argues that the two speedy trial demands filed by his appointed attorneys and his pro se invocations of the right to a speedy trial in his first motion to dismiss his attorney, his motion for a telephonic setting, and his motion to dismiss the indictment filed on the eve of trial in April 2013 demonstrate that he frequently and forcefully asserted his right to a speedy trial.

{60} In *Garza*, our Supreme Court held that the defendant's single speedy trial demand, "preceding his motion to dismiss, tucked within the waiver of arraignment and not guilty plea, was sufficient to assert his right." *Id.* ¶ 34. The Court noted that although the defendant's single invocation of his right to a speedy trial "was not especially vigorous[,]" the fact that the defendant had not otherwise acquiesced in the delay required the third *Barker* factor to be weighed slightly in his favor. *Id.*

{61} Here, Defendant invoked his right to a speedy trial five times—twice through his lawyers, and three times through pro se motions to discharge his attorney, set a telephonic hearing, and to dismiss the indictment. Although Defendant invoked his right to a speedy trial many more times than the defendant did in *Garza*, this fact is mitigated by the context of Defendant's invocations of the right to a speedy trial: as we have explained above, Defendant's first two pro se motions to dismiss were filed on the eve of trial and sought a new attorney as the primary relief. Defendant's pro se motion to dismiss was likewise filed on the eve of his April 2013 trial, which ultimately went forward after it was denied. And against Defendant's invocations of his right to a speedy trial, Defendant at least once sought to delay his trial by more than two years in order to avoid violating his conditions of release for an unrelated criminal conviction.

{62} Under these circumstances, we cannot say that the district court's finding that Defendant did not frequently or forcefully invoke his right to a speedy trial lacks a substantial basis. *See Garza*, 2009-NMSC-038, ¶ 32 (quoting *Sisneros v. State*, 121 P.3d 790, 800 (Wyo. 2005), for the proposition that the third *Barker* factor should be weighed neutrally where the defendant "demanded a speedy trial throughout the proceedings, but 'also engaged in procedural maneuvers which had the result of delaying the trial' "). Accordingly, we cannot reverse the district court's ultimate finding to weigh the third *Barker* factor neutrally.

4. The Prejudice to Defendant Caused by the Delay

{63} The United States Supreme Court in *Barker* explained the "actual prejudice" prong of the constitutional speedy trial analysis as follows:

> Prejudice . . . should be assessed in the light of the interests of [the] defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.

407 U.S. at 532; *see State v. Maddox*, 2008-NMSC-062, ¶ 32, 145 N.M. 242, 195 P.3d 1254, *abrogated on other grounds by Garza*, 2009-NMSC-038, ¶¶ 47-48.

{64} "Ordinarily, a defendant bears the burden of proof on this factor by showing 'particularized prejudice' when claiming a speedy trial violation." *Serros*, 2016-NMSC-008, ¶ 86 (quoting *Garza*, 2009-NMSC-038, ¶ 39). "However, if the length of delay and the reasons for the delay weigh heavily in [the] defendant's favor and [the] defendant has asserted his right and not acquiesced to the delay, then the defendant need not show prejudice for a court to conclude that the defendant's right has been violated." *Serros*, 2016-NMSC-008, ¶ 86 (internal quotation marks and citation omitted).

{65} At the hearing on Defendant's final motion to dismiss on speedy trial grounds, the district court explained why it concluded Defendant had failed to demonstrate particularized prejudice. The court stated:

> [W]ithout going through all the dates of when he was arrested, where he was arrested and why he was arrested, [I am] unable to state whether he served any—much, if any, pretrial incarceration time on this case. I know he was brought here from Luna County, so he's currently in custody in Luna County. So I don't think there is going to be [any] impressive pretrial incarceration. With regard to it having any

> impact on his ability to mount a defense, I've heard nothing about that today.

{66} Defendant first argues that the district court erred by assigning the burden of proving prejudice instead of requiring the State to prove the absence of prejudice. But *Salandre v. State*, 1991-NMSC-016, 111 N.M. 422, 806 P.2d 562, the case that Defendant cites in support of this proposition, was modified by *Garza*, which expressly held that *Salandre* should not be read to impose on the State a burden of disproving prejudice. *See Garza*, 2009-NMSC-038, ¶¶ 15-24 ("In light of the overwhelming consensus among the federal Circuit Courts of Appeals and our policy of providing a functional analysis based on the facts and circumstances of each case, we abolish [*Salandre*'s] presumption that a defendant's right to a speedy trial has been violated based solely on the threshold determination that the length of delay is 'presumptively prejudicial.' "). Under *Garza*, Defendant bears the burden to identify and sufficiently establish particularized prejudice stemming from the presumptively prejudicial delays in this case.

{67} In this regard, Defendant argues that his pro se motions to dismiss his attorney and dismiss the indictment on speedy trial grounds "express[] overwhelming concern over the status of his case[.]" Defendant also points out that he was incarcerated for a significant portion of the delays at issue. These facts, Defendant claims, refute the district court's conclusion that Defendant did not suffer particularized prejudice as a result of the presumptively prejudicial delays in this case.

{68} The problem with this argument is that it depends on two factual inferences that the district court was free to ignore given evidence tending to refute Defendant's claim that he had long been asserting his speedy trial rights and had not caused the delays at issue. The first inference is that Defendant's expressions of "overwhelming concern over the status of his case" in his pro se motions were sincere. *See Serros*, 2016-NMSC-008, ¶ 88 (finding particularized prejudice prejudice based on lengthy pretrial incarceration based on the defendant's "*unchallenged* testimony at the hearing on his motion to dismiss, in which he described his living conditions for the previous four years"). Here, Defendant's attorney provided evidence that Defendant was seeking to fire him not because of a lack of communication but because he was unhappy with the State's plea offer, and Defendant had deliberately sought to sabotage the attorney-client relationship by seeking out another attorney and threatening to sue him. Given this evidence, the district court could permissibly view Defendant's speedy trial complaints as part of an effort to derail the case on the eve of trial, not a genuine desire for finality.

{69} The second inference is that Defendant's pretrial incarceration was caused by the delays in this case. As Defendant concedes, he was released on bond roughly six months after his arrest. While this period of incarceration can certainly be considered prejudicial in the present case, it cannot simply be lumped together with the periods of incarceration that resulted from Defendant's parole violations in unrelated cases, as the district court noted in its oral findings on prejudice. Properly assigned, it is clear that Defendant was incarcerated based upon the instant charges for at most six months of the total period of delay at issue in this case. We do not think that the prejudice Defendant suffered as a result of his incarceration after his arrest in the present case is enough to find that Defendant was prejudiced by the entire twenty-nine month delay in this case. *Cf. Id.*, 2016-NMSC-008, ¶ 93 (upholding a district court's finding of prejudice arising from the defendant's incarceration in administrative segregation for the entire period of pretrial delay). Indeed, the record indicates Defendant was in and out of jail following his initial satisfaction of bail in this case based upon his own actions before and after the relevant arrest and release from incarceration in the present case.

{70} Defendant finally argues that because of the delays in bringing his case to trial, he suffered particularized prejudice because he lost the opportunity to serve his sentence in this case concurrently with his sentences for unrelated criminal convictions. *See State v. Zurla*, 1990-NMSC-011, ¶ 23, 109 N.M. 640, 789 P.2d 588 ("[The appellate courts] believe loss of the possibility of serving concurrent sentences did constitute an aspect of prejudice."). But *Zurla*, which Defendant cites in support of his argument, weighed the second *Barker* factor heavily against the state, finding that its negligence was the cause of all of the delays at issue. *Zurla*, 1990-NMSC-011, ¶¶ 14-17. Here, as we have already explained, a significant amount of the delay in this case was caused by Defendant. Without explaining how the delays caused by the State (rather than those caused by Defendant) resulted in Defendant's lost opportunity to serve concurrent sentences, we do not think Defendant has demonstrated particularized prejudice on this ground.

{71} For the foregoing reasons, we conclude that the district court correctly found that Defendant had failed to demonstrate particularized prejudice arising from the delays in this case.

5. Balancing the Factors

{72} To recapitulate, the first *Barker* factor strongly favors Defendant; the nearly twenty-nine month long delay in this case exceeds the amount of time that a criminal case of intermediate complexity is presumed to require. *See Serros*, 2016-NMSC-008, ¶ 23. However, this is the only *Barker* factor that ultimately weighs in Defendant's favor. As for the second *Barker* factor, Defendant expressed his desire to bring his case to trial but inconsistently interposed numerous delays and requested continuances of scheduled trial dates, all reasons for delay that weigh in the State's favor. We attach particular importance to Defendant's repeated efforts to delay trial by more than two years in order to prioritize fulfilling his conditions of probation in an unrelated case. Ultimately, the district court accurately weighed this second *Barker* factor in favor of the State. Defendant's inconsistent assertions of his speedy trial right while simultaneously requesting continuances of trial settings also supported the district court's determination regarding the third *Barker* factor, a reasonably vigorous assertion of one's right to a speedy trial. We conclude that assigning neutrality to this third *Barker* factor was not error under the facts presented in this case. Finally, Defendant failed to identify or establish particularized prejudice under the fourth *Barker* factor. As a result, our de novo review of all four speedy trial factors support the district court's conclusion that Defendant's speedy trial rights were not violated.

III. CONCLUSION

{73} We affirm the district court's denial of Defendant's motion to dismiss on speedy trial grounds. We also reject Defendant's challenge to the sufficiency of the evidence supporting his conviction for conspiracy to commit forgery.

{74} Defendant's conviction is affirmed.

{75} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:
JONATHAN B. SUTIN, Judge
TIMOTHY L. GARCIA, Judge

Classified

Positions

Senior Trial Attorney/Deputy Trial Colfax County

The Eighth Judicial District Attorney's Office is accepting applications for a Senior Trial Attorney or Deputy District Attorney in the Raton Office. The position will be responsible for a felony caseload and must have at least two (2) to four (4) years as a practicing attorney in criminal law. This is a mid-level to an advanced level position. Salary will be based upon experience and the District Attorney Personnel and Compensation Plan. Please send interest letter/resume to Suzanne Valerio, District Office Manager, 105 Albright Street, Suite L, Taos, New Mexico 87571 or svalerio@da.state.nm.us. Deadline for the submission of resumes: Open until position is filled.

Criminal Justice Advocate

The American Civil Liberties Union (ACLU) of New Mexico seeks a full-time Criminal Justice Advocate based in Albuquerque. The primary responsibility of the Criminal Justice Advocate is to develop and implement plans to change laws, regulations, policies, and procedures that impact corrections and law enforcement in New Mexico. This involves data-gathering and research; forming alliances with strategic partners; mobilizing and organizing constituent support of ACLU-NM's policy positions; lobbying government officials and legislative bodies; and representation of the ACLU-NM's positions in public forums. For the full position announcement and how to apply, please go to: https://www.aclu-nm.org/position-announcement-criminal-justice-advocate/2016/09/

13th Judicial District Attorney Assistant Trial Attorney, Senior Trial Attorney

Assistant Trial Attorney - The 13th Judicial District Attorney's Office is accepting applications for entry to mid-level attorney to fill the positions of Assistant Trial Attorney. These positions require misdemeanor and felony caseload experience. Senior Trial Attorney – We are also accepting applications for attorneys with a high level of experience prosecuting serious violent offenses. A proven track record in these major cases and experience in management/supervisory/personnel areas is also a plus. Salary for each position is commensurate with experience. Send resumes to Reyna Aragon, District Office Manager, PO Box 1750, Bernalillo, NM 87004, or via E-Mail to: RAragon@da.state.nm.us. Deadline for submission of resumes: Open until positions are filled.

Arbitrators
The New Mexico Secretary of State's Office is seeking applications from attorneys interested in serving as arbitrators in hearings conducted pursuant to the Campaigning Reporting Act. Persons subjected to any of the state's governmental ethics laws (Campaign Reporting Act, Lobbyist Regulation Act or Financial Disclosure Act) may not serve as an arbitrator. Arbitrators will serve as independent contractors. Compensation is $1,200.00 per hearing. Applicant must have experience serving as an arbitrator. If interested, mail your resume and letter of interest to: Office of Secretary of State, ATTN: Ken Ortiz, Chief of Staff, 325 Don Gaspar-Suite 300, Santa Fe, NM 87501

Associate
Busy Family Law practice in Santa Fe looking for associate. Must be committed to assisting clients and building practice. Some Family Law experience required. Send letter and resume to lori@leeslawfirm.com

Associate Attorney
Couture Law, LLC is seeking a full-time associate attorney to join our team. We offer a professional, fast-paced, and pleasant environment. The areas of practice include Family Law and Workers' Compensation, with a primary focus in Family Law. Salary is commensurate with qualifications. Interested candidates should email a cover letter, resume, and salary history to: Tamara@CoutureLaw.com. No phone calls, please.

Associate Attorney
Gorence & Oliveros, P.C. is seeking an associate attorney to join the firm. Must have impeccable research and writing skills and excellent credentials. Three (3) years of experience is required. This is not a litigation position. Competitive salary and benefits. Please submit a cover letter, resume, references and at least one writing sample directed to the Hiring Partner via email only to al@golaw.us.

Attorney:
Blackburn Law Offices, an established Albuquerque criminal defense and racetrack/casino litigation firm, is seeking a full time associate attorney to assist in all areas of our practice. Candidates should have strong writing and analytical skills. Please submit a letter of interest and resume to Admin@BBlackburnLaw.com or Blackburn Law Offices, 1011 Lomas NW, Albuquerque, NM 87102.

Position Announcement
Assistant Federal Public Defender-Las Cruces
2016-02
The Federal Public Defender for the District of New Mexico is seeking a full time, experienced trial attorney for the branch office in Las Cruces. More than one vacancy may be filled from this announcement. Federal salary and benefits apply. Applicant must have one year minimum criminal law trial experience, be team-oriented, exhibit strong writing skills as well as a commitment to criminal defense for all individuals, including those who may be facing the death penalty. Spanish fluency preferred. Writing ability, federal court, and immigration law experience will be given preference. Membership in the New Mexico Bar is required within the first year of employment. The private practice of law is prohibited. Selected applicant will be subject to a background investigation. The Federal Public Defender operates under authority of the Criminal Justice Act, 18 U.S.C. 3006A, and provides legal representation in federal criminal cases and related matters in the federal courts. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience, including trial and appellate work, with three references to: Stephen P. McCue, Federal Public Defender, FDNM-HR@fd.org. Reference 2016-02 in the subject. Writing samples will be required only from those selected for interview. Applications must be received by October 14, 2016. Position will remain open until filled and is subject to the availability of funding. No phone calls please. Submissions not following this format will not be considered. Only those selected for interview will be contacted.

Assistant City Attorney Position
Assistant City Attorney position available with the Litigation Division with desired experience in civil litigation handling pretrial discovery, motion practice, trial preparation, and trial. We are seeking attorneys who have an interest in defending civil rights, personal injury, and premises liability cases within a positive team environment. Salary will be based upon experience and the City of Albuquerque Attorney's Personnel and Compensation Plan with a City of Albuquerque Benefits package. Please submit resume to attention of "Litigation Attorney Application" c/o Ramona Zamir-Gonzalez, Executive Assistant; P.O. Box 2248, Albuquerque, NM 87103 or rzamir-gonzalez@cabq.gov. Application deadline is Tuesday, October 11, 2016.

Attorney
The Fifth Judicial District Attorney's office has an immediate position open to a new or experienced attorney. Salary will be based upon the District Attorney Personnel and Compensation Plan with starting salary range of an Associate Trial Attorney to a Senior Trial Attorney ($41,685.00 to $72,575.00). Please send resume to Dianna Luce, District Attorney, 301 N. Dalmont Street, Hobbs , NM 88240-8335 or e-mail to DLuce@da.state.nm.us.

Wanted for Immediate Hire a Bilingual (Spanish/English) Associate!
Our busy Albuquerque workers' compensation and personal injury firm seeks a junior associate to assist senior attorneys and paralegals with: Assisting with discovery requests, depositions, hearings and mediations; Researching and drafting motions, pleadings, memoranda of law and other legal documents; Covering hearings, depositions and mediations; Communicating and meeting with clients; Related duties. Excellent opportunity to grow for the right person! Requirements: You must be a member of the New Mexico Bar; You must be Spanish/English bilingual; You must be enthusiastic; You must be a reliable team player that is willing to learn; You must be client-driven and highly motivated. Benefits offered include medical, dental, vision and life insurance, as well as 401k, paid firm holidays and paid time off. Compensation commensurate with experience. Please send resume to jobs@mslfim.com

DDPC Office of Guardianship Contract Attorneys Needed
Developmental Disabilities Planning Council/Office of Guardianship, a state agency provides free legal services pursuant to the Uniform Probate Code for low-income adult New Mexicans alleged to be incapacitated and unable to make decisions regarding their medical and personal care. The Office of Guardianship is seeking to contract with attorneys to serve as both petitioning attorneys and court-appointed guardian ad litem. These attorneys play an important role in assisting vulnerable adults whose intellectual or developmental disabilities, mental illness or whose capacity warrants protection. Attorneys obtain valuable experience in adult guardianship proceedings and great satisfaction in helping others. The Office of Guardianship provides training and mentorship to interested attorneys. Submit letters of interest and résumés to Maria Bourassa, Manager, at maria.bourassa@state.nm.us or DDPC Office of Guardianship, 625 Silver Avenue SW, Suite 100, Albuquerque NM 87102.

Paralegal & Legal Assistant - Operational (NMDOT)

The NMDOT seeks to fill a Paralegal & Legal Assistant – Operational position. The position provides assistance to Office of General Counsel attorneys and will conduct legal research, investigate facts and prepare legal documents; assist with employment, personnel, contracts and tort matters, including litigation, discovery and hearing preparation; will have primary responsibility for preparation of wage withholding and garnishment files, pleadings and communications with creditors, debtors and other state and federal agencies. Direct experience drafting and preparing legal correspondence and pleadings, conducting legal research, maintaining a case management/tracking system and in providing support in employment, torts, civil rights or governmental entity defense. ProLaw experience is highly desirable. Candidate is required to become & / or maintain a current New Mexico Notary Public Commission. The minimum qualifications for this position require an Associate's Degree in Paralegal Studies and two (2) years of work experience drafting and preparing legal correspondence and pleadings, conducting legal research and maintaining a case management / tracking system. A combination of education from an accredited college or university in a related field and direct experience in this occupation totaling four (4) years may substitute for the required minimum qualifications. Position is a Pay Band 55, hourly salary range from $12.61 to $21.95, depending on qualifications and experience, with all state benefits to apply. Overnight travel throughout the state is occasionally required. A valid New Mexico driver's license must be maintained at all times during employment. Working conditions: Primarily in an office setting requiring extensive personal computer and phone use, with occasional high pressure situations. Applicants must apply through the State Personnel Office: http:/www.state.nm.us/spo by the closing date of the job posting. The New Mexico Department of Transportation is an equal opportunity employer.

Legal Assistant

Legal Assistant for busy NM non-profit children's legal services agency. Heavy client contact; requires experience with Microsoft Office, self motivation & a strong work ethic, previous legal assistant experience required; excellent communication & organizational skills. Must have a sense of humor; be flexible and able to multitask. Must be a team player; Bilingual Spanish/English strongly is preferred. Benefits. Please email resume to info@pegasuslaw.org.

Legal Secretary - Advanced Position

The New Mexico Department of Transportation (NMDOT) – Office of General Counsel is seeking an experienced legal secretary to perform legal secretarial, clerical and other administrative services, as assigned, including word processing and management of files and records. The successful candidate will also be required to perform primary receptionist and telephone coverage (call routing) duties as well as provide customer service assistance to both internal and external NMDOT clientele. Duties of the position also include logging and tracking of all incoming and outgoing contracts, calendaring, scheduling, reviewing and distributing all incoming mail, maintaining related tracking logs, and assisting with accounts payable and HR related tasks. Candidates must possess the ability to assist with the preparation of certain legal documents; accordingly, familiarity with and responsibility for compliance with state court procedures and filing requirements is a necessity. Ability to meet multiple demands in a timely and courteous manner, experience working with computers (Windows operating system, Microsoft Word and Outlook) and other office electronic equipment (copiers, scanners, fax machine, etc.) is essential; ProLaw case management system experience is preferred. Education/Experience: Associates Degree and a minimum of two (2) years of directly related secretarial, clerical and reception experience utilizing legal terminology, procedures and documents preferred, or in the alternative, a High School diploma or GED with at least one (1) year of directly related legal secretarial, clerical and receptionist experience utilizing legal terminology, procedures and documents. The position is a Pay Band 50, yearly salary range from $23,525 to $40,914, depending on qualifications and experience, with all state benefits to apply. A valid New Mexico driver's license must be maintained at all times during employment. Applicants must apply through the State Personnel Office: http//www.spo.state.nm.us/ by the closing date of the job posting. In addition, please submit a copy of your resume and transcripts to Shannell Montoya, NMDOT, via e-mail Shannell.Montoya2@state.nm.us. For application assistance, please contact Ms. Montoya via email. NMDOT is an equal opportunity employer.

Full-Time Receptionist/File Clerk

Small busy law firm seeking experienced, full-time Receptionist/File Clerk, knowledge of Microsoft Word necessary. Salary negotiable. Email Resume to nacolbert@yahoo.com or fax to (505) 266-4330

Circuit CJA Case-Budgeting Attorney

The United States Court of Appeals for the Tenth Circuit is seeking applications from qualified persons for the position of Circuit CJA Case-Budgeting Attorney. The Budgeting Attorney will work across the circuit to aid appellate, district, and magistrate judges and CJA panel attorneys in a wide range of duties related to CJA case budgeting and voucher processing. For the full job announcement and application instructions, visit www.ca10.uscourts.gov/hr/jobs

Litigation Legal Assistant

Butt Thornton & Baehr PC has an opening for an experienced litigation legal assistant (5+ years). Must be well organized, and have the ability to work independently. Excellent typing/word processing skills required. Generous benefit package. Salary DOE. Please sent letter of interest and resume to, gejohnson@btblaw.com

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Nurse Paralegal
Specialist in medical chronologies, related case analysis/research. Accurate, knowledgeable work product. For resume, work samples, references: maryj.daniels@yahoo.com.

Office Space

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620 ROMA N.W., located within two blocks of the three downtown courts. Rent includes utilities (except phones), fax, internet, janitorial service, copy machine, etc. All of this is included in the rent of $550 per month. Up to three offices are available to choose from and you'll also have access to five conference rooms, a large waiting area, access to full library, receptionist to greet clients and take calls. Call 243-3751 for appointment to inspect.

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